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Rules and Regulations

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Friday, March 1, 2024

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1835; Airspace Docket No. 23–AEA–10]

RIN 2120–AA66

Establishment and Amendment of United States Area Navigation (RNAV) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes one United States Area Navigation (RNAV) Q-route, four RNAV T-routes, and amends one RNAV T-route in the eastern United States. This action supports FAA's Next Generation Air Transportation System (NextGen) efforts to provide a modern RNAV route structure to improve the safety and efficiency of the National Airspace System (NAS).

DATES: Effective date 0901 UTC, May 16, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Brian Vidis, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Air Traffic Service (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a NPRM for Docket No. FAA 2023–1835 in the **Federal Register** (88 FR 68516; October 4, 2023), proposing to establish seven RNAV routes and amend one RNAV route in the eastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

The NPRM published for Docket No. FAA–2023–1835 in the **Federal Register** (88 FR 68516; October 4, 2023) contained a typographical error in the summary section. The summary section stated that the NPRM was proposing to establish three RNAV Q-routes, five RNAV T-routes, and amend one RNAV T-route. This should have stated that it was proposing to establish three RNAV Q-routes, four RNAV T-routes, and amend one RNAV T-route. Additionally, since publishing the NPRM, the FAA decided to postpone the establishment of RNAV Routes Q–221 and Q–227.

Further, in the NPRM's description of RNAV Routes Q–232, T–335, and T–432, the FAA incorrectly listed the NEION, NJ; HAWLY, PA; and CORTA, PA route points as waypoints (WP). These three route points are identified as a Fix in the National Airspace System Resource (NASR) database and charted as a Fix accordingly. This final rule corrects these errors.

Incorporation by Reference

United States Area Navigation routes (Q-routes) are published in paragraph 2006 and United States Area Navigation (T-routes) are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by establishing one RNAV Q-route, four RNAV T-routes, and amending one RNAV T-route in the eastern United States. This action supports FAA NextGen efforts to provide a modern RNAV route structure to improve the safety and efficiency of the NAS. The amendments are described below.

Q–232: Q–232 is a new RNAV route that extends between the STUBN, NY, WP and the NEION, NJ, Fix. RNAV route Q–232 overlays a portion of Jet Route J–132 between the Elmira, NY (ULW), Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and the CORDS, PA, Fix, and Jet Route J–223 between the CORDS Fix and the NEION Fix.

T–303: T–303 is a new RNAV route that extends between the Kinston, NC (ISO), VOR/Tactical Air Navigation (VORTAC) and the Boston, MA (BOS), VOR/DME. RNAV route T–303 overlays a portion of VOR Federal Airway V–1 between the Kinston VORTAC and the Boston VOR/DME.

T–307: T–307 is a new RNAV route that extends between the PEARS, NC, Fix and the Syracuse, NY (SYR), VORTAC. RNAV route T–307 overlays a portion of VOR Federal Airway V–139 between the PEARS Fix and the Sea Isle, NJ (SIE), VORTAC; VOR Federal Airway V–166 between the Sea Isle VORTAC and the BRIEF, NJ, Fix; VOR Federal Airway V–184 between the PADRE, PA, Fix and the Philipsburg, PA (PSB), VORTAC; and VOR Federal Airway V–35 between the Philipsburg VORTAC and the Syracuse VORTAC.

T–335: T–335 is a new RNAV route that extends between the ZJAAY, MD, WP and the Syracuse, NY (SYR), VORTAC. RNAV route T–335 overlays VOR Federal Airway V–29 between the ZJAAY WP, which is co-located with the Snow Hill, MD (SWL), VORTAC, and the Syracuse VORTAC.

T–432: T–432 is a new RNAV route that extends between the STUBN, NY, WP and the NEION, NJ, Fix. RNAV route T–432 overlays VOR Federal Airway V–36 between the STUBN WP, which is co-located with the Elmira, NY (ULW), VOR/DME, and the NEION Fix.

T–705: Prior to this final rule, T–705 extended between the DANZI, NY, WP and the MUTNA, NY, WP. The airway segment between the DANZI WP and the CODDI, NY, FIX is removed. Additionally, T–705 is extended to the southeast between the CODDI Fix and the Nantucket, MA (ACK), VOR/DME. As amended, T–705 is changed to now extend between the Nantucket VOR/DME and the MUTNA WP. The amended route segment of T–705 overlays portions of VOR Federal Airway V–46 between the Nantucket VOR/DME and the Calverton, NY (CCC), VOR/DME, and VOR Federal Airway V–44 between the BELTT, NY, Fix and the Pawling, NY (PWL), VOR/DME. The full T–705 route description is listed in the amendments to part 71 as set forth below.

Regulatory Notices and Analyses

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. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of establishing one RNAV Q-route, four RNAV T-routes, and amending one RNAV T-route in the eastern United States which supports FAA's NextGen efforts, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*). . .''. As such, this airspace action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 2006. United States Area Navigation Routes.

* * * * *

Q–232 STUBN, NY to NEION, NJ [New]

STUBN, NY	WP	(Lat. 42°05′38.58″ N, long. 077°01′28.68″ W)
CORDS, PA	FIX	(Lat. 41°34′11.04″ N, long. 075°08′23.50″ W)
NEION, NJ	FIX	(Lat. 41°13′41.21″ N, long. 074°34′50.78″ W)

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–303 Kinston, NC (ISO) to Boston, MA (BOS) [New]

Kinston, NC (ISO)	VORTAC	(Lat. 35°22′15.41″ N, long. 077°33′29.94″ W)
KOHLS, NC	WP	(Lat. 36°22′17.76″ N, long. 076°52′21.48″ W)
Norfolk, VA (ORF)	VORTAC	(Lat. 36°53′30.86″ N, long. 076°12′01.18″ W)
OUTLA, VA	WP	(Lat. 37°20′45.48″ N, long. 075°59′54.08″ W)
JAMIE, VA	FIX	(Lat. 37°36′20.58″ N, long. 075°57′48.81″ W)
MAGGO, MD	FIX	(Lat. 37°58′58.48″ N, long. 075°44′01.39″ W)
TRPOD, MD	WP	(Lat. 38°20′20.33″ N, long. 075°32′01.85″ W)
Waterloo, DE (ATR)	VOR/DME	(Lat. 38°48′35.32″ N, long. 075°12′40.76″ W)

LEEAH, NJ	FIX	(Lat. 39°15′39.27″ N, long. 074°57′11.01″ W)
DIXIE, NJ	FIX	(Lat. 40°05′57.72″ N, long. 074°09′52.17″ W)
Kennedy, NY (JFK)	VOR/DME	(Lat. 40°37′58.38″ N, long. 073°46′17.01″ W)
Deer Park, NY (DPK)	VOR/DME	(Lat. 40°47′30.30″ N, long. 073°18′13.17″ W)
Madison, CT (MAD)	VOR/DME	(Lat. 41°18′49.90″ N, long. 072°41′31.93″ W)
Hartford, CT (HFD)	VOR/DME	(Lat. 41°38′27.98″ N, long. 072°32′50.70″ W)
GRAYM, MA	FIX	(Lat. 42°06′04.27″ N, long. 072°01′53.49″ W)
GRIPE, MA	FIX	(Lat. 42°08′08.87″ N, long. 071°54′32.47″ W)
Boston, MA (BOS)	VOR/DME	(Lat. 42°21′26.82″ N, long. 070°59′22.37″ W)

* * * * *

T–307 PEARS, NC to Syracuse, NY (SYR) [New]

PEARS, NC	FIX	(Lat. 35°47′12.36″ N, long. 076°57′01.97″ W)
Norfolk, VA (ORF)	VORTAC	(Lat. 36°53′30.86″ N, long. 076°12′01.18″ W)
OUTLA, VA	WP	(Lat. 37°20′45.48″ N, long. 075°59′54.08″ W)
DUNFE, VA	FIX	(Lat. 37°53′18.83″ N, long. 075°35′29.39″ W)
ZJAAY, MD	WP	(Lat. 38°03′09.95″ N, long. 075°26′34.27″ W)
CBEAV, MD	FIX	(Lat. 38°22′19.01″ N, long. 075°15′53.18″ W)
WNSTN, NJ	WP	(Lat. 39°05′43.81″ N, long. 074°48′01.20″ W)
BRIEF, NJ	FIX	(Lat. 39°26′55.21″ N, long. 075°07′39.69″ W)
TEBEE, NJ	FIX	(Lat. 39°30′13.97″ N, long. 075°19′37.19″ W)
CHAZR, DE	WP	(Lat. 39°29′28.14″ N, long. 075°44′28.13″ W)
APEER, MD	WP	(Lat. 39°37′32.94″ N, long. 075°50′25.39″ W)
REESY, PA	WP	(Lat. 39°45′27.94″ N, long. 075°52′07.09″ W)
PADRE, PA	FIX	(Lat. 39°56′16.67″ N, long. 076°03′18.63″ W)
DELRO, PA	FIX	(Lat. 39°57′55.71″ N, long. 076°37′31.24″ W)
Harrisburg, PA (HAR)	VORTAC	(Lat. 40°18′08.06″ N, long. 077°04′10.41″ W)
PYCAT, PA	FIX	(Lat. 40°26′46.60″ N, long. 077°17′21.35″ W)
MCMAN, PA	FIX	(Lat. 40°38′16.11″ N, long. 077°34′14.31″ W)
RASHE, PA	FIX	(Lat. 40°40′36.04″ N, long. 077°38′38.94″ W)
Philipsburg, PA (PSB)	VORTAC	(Lat. 40°54′58.53″ N, long. 077°59′33.78″ W)
DLMAR, PA	WP	(Lat. 41°41′42.56″ N, long. 077°25′11.02″ W)
STUBN, NY	WP	(Lat. 42°05′38.58″ N, long. 077°01′28.68″ W)
Syracuse, NY (SYR)	VORTAC	(Lat. 43°09′37.87″ N, long. 076°12′16.41″ W)

* * * * *

T–335 ZJAAY, MD to Syracuse, NY (SYR) [New]

ZJAAY, MD	WP	(Lat. 38°03′09.95″ N, long. 075°26′34.27″ W)
TRPOD, MD	WP	(Lat. 38°20′20.33″ N, long. 075°32′01.85″ W)
EZIZI, DE	FIX	(Lat. 38°36′12.96″ N, long. 075°30′38.10″ W)
Smyrna, DE (ENO)	VORTAC	(Lat. 39°13′53.93″ N, long. 075°30′57.49″ W)
Dupont, DE (DQO)	VORTAC	(Lat. 39°40′41.31″ N, long. 075°36′25.51″ W)
MARQI, PA	WP	(Lat. 39°55′22.30″ N, long. 075°32′11.18″ W)
Pottstown, PA (PTW)	VORTAC	(Lat. 40°13′20.04″ N, long. 075°33′36.90″ W)
East Texas, PA (ETX)	VOR/DME	(Lat. 40°34′51.74″ N, long. 075°41′02.51″ W)
WLKES, PA	WP	(Lat. 41°16′22.57″ N, long. 075°41′21.60″ W)
Binghamton, PA (CFB)	VOR/DME	(Lat. 42°09′26.97″ N, long. 076°08′11.30″ W)
CORTA, PA	FIX	(Lat. 42°40′25.65″ N, long. 076°04′34.93″ W)
Syracuse, NY (SYR)	VORTAC	(Lat. 43°09′37.87″ N, long. 076°12′16.41″ W)

* * * * *

T–432 STUBN, NY to NEION, NJ [New]

STUBN, NY	WP	(Lat. 42°05′38.58″ N, long. 077°01′28.68″ W)
BNELE, PA	WP	(Lat. 41°49′06.83″ N, long. 076°03′04.46″ W)
HAWLY, PA	FIX	(Lat. 41°32′23.31″ N, long. 075°05′25.66″ W)
NEION, NJ	FIX	(Lat. 41°13′41.21″ N, long. 074°34′50.78″ W)

* * * * *

T–705 Nantucket, MA (ACK) to MUTNA, NY [Amended]

Nantucket, MA (ACK)	VOR/DME	(Lat. 41°16′54.79″ N, long. 070°01′36.16″ W)
LIBBE, NY	FIX	(Lat. 41°00′15.86″ N, long. 071°21′20.34″ W)
ORCHA, NY	WP	(Lat. 40°54′55.46″ N, long. 072°18′43.64″ W)
Calverton, NY (CCC)	VOR/DME	(Lat. 40°55′46.63″ N, long. 072°47′55.89″ W)
Bridgeport, CT (BDR)	VOR/DME	(Lat. 41°09′38.54″ N, long. 073°07′28.15″ W)
LOVES, CT	FIX	(Lat. 41°32′19.64″ N, long. 073°29′17.14″ W)
PAWLN, NY	FIX	(Lat. 41°46′11.51″ N, long. 073°36′02.64″ W)
CYPER, NY	FIX	(Lat. 42°06′32.37″ N, long. 074°16′25.52″ W)

CODDI, NY	FIX	(Lat. 42°22′52.15″ N, long. 075°00′21.84″ W)
LAMMS, NY	WP	(Lat. 43°01′35.30″ N, long. 075°09′51.50″ W)
SRNAC, NY	WP	(Lat. 44°23′05.00″ N, long. 074°12′16.11″ W)
RIGID, NY	WP	(Lat. 44°35′19.53″ N, long. 073°44′34.07″ W)
PBERG, NY	WP	(Lat. 44°42′06.25″ N, long. 073°31′22.18″ W)
MUTNA, NY	WP	(Lat. 45°00′20.84″ N, long. 073°33′27.65″ W)

* * * * *

Issued in Washington, DC, on February 26, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–04332 Filed 2–29–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2340; Airspace Docket No. 23–AGL–38]

RIN 2120–AA66

Amendment of Class E Airspace; Danville, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Danville, IL. This action is the result of an airspace review conducted due to the decommissioning of the Danville very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The name and geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database. This action brings the airspace into compliance with FAA orders to support instrument flight rule (IFR) operations.

DATES: Effective 0901 UTC, May 16, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Vermilion Regional Airport, Danville, IL, to support IFR operations at this airport.

History

The FAA published an NPRM for Docket No. FAA–2023–2340 in the **Federal Register** (88 FR 87731; December 19, 2023) proposing to amend the Class E airspace at Danville, IL. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile (increased from a 6.5-mile) radius of Vermilion Regional Airport, Danville, IL; updates the name (previously Vermilion County Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removes the city associated with the airport from the header to comply with changes to FAA Order JO 7400.2P, Procedures for Handling Airspace Matters.

Regulatory Notices and Analyses

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. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL IL E5 Danville, IL [Amended]

Vermilion Regional Airport, IL
(Lat. 40°11′59″ N, long. 87°35′43″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Vermilion Regional Airport.

* * * * *

Issued in Fort Worth, Texas, on February 27, 2024.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–04318 Filed 2–29–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1829; Airspace Docket No. 23–ASO–5]

RIN 2120–AA66

Amendment of Very High Frequency Omnidirectional Range (VOR) Federal Airway V–9; Arkansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Very High Frequency Omnidirectional Range (VOR) Federal Airway V–9 in Arkansas to support the Department of Defense's (DoD) request for connectivity between the Marvell, AR (UJM), VOR/Distance Measuring Equipment (DME) and the Farmington, MO (FAM), VOR/Tactical Air Navigation (VORTAC) creating a longer contiguous airway simplifying flight planning along this route segment.

DATES: Effective date 0901 UTC, May 16, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Brian Vidis, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Air Traffic Service (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

History

The FAA published a NPRM for Docket No. FAA 2023–1829 in the **Federal Register** (88 FR 68512; October 4, 2023), proposing to amend V–9 in Arkansas. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

VOR Federal airways are published in paragraph 6010 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending VOR Federal Airway V–9 in Arkansas by adding a segment between the Marvel, AR (UJM), VOR/DME and the Farmington, MO, FAM), VORTAC creating a longer contiguous airway in support of the DoD's request to simplify flight planning along this route segment. The amendment is described below.

V–9: Prior to this final rule, V–9 extended between the Leeville, LA (LEV), VORTAC and the Marvell, AR (UJM), VOR/DME; between the Farmington, MO (FAM), VORTAC and the Pontiac, IL (PNT), VOR/DME; and between the Janesville, WI (JVL), VOR/DME and the Houghton, MI (CMX), VOR/DME. The FAA establishes V–9 between the Marvell VOR/DME and the Farmington VORTAC which creates a longer contiguous airway. As amended, the route is changed to now extend between the Leeville VORTAC and the Pontiac VOR/DME, and between the Janesville VOR/DME and the Houghton VOR/DME.

All radials listed in the VOR Federal airway description in the Amendment section below are stated in degrees True north.

Regulatory Notices and Analyses

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. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending VOR Federal Airway V–9 in the eastern United States, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*). . .''. As such, this airspace action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–9 [Amended]

From Leeville, LA; McComb, MS; INT McComb 004° and Magnolia, MS 194° radials; Magnolia; Sidon, MS; Marvell, AR; INT Marvell 326° and Walnut Ridge, AR 187° radials; Walnut Ridge; Farmington, MO; St. Louis, MO; Spinner, IL; to Pontiac, IL. From Janesville, WI; Madison, WI; Oshkosh, WI; Green Bay, WI; Iron Mountain, MI; to Houghton, MI.

* * * * *

Issued in Washington, DC, on February 26, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–04331 Filed 2–29–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2024–0291; Airspace Docket No. 23–AWP–68]

RIN 2120–AA66

Amendment of Restricted Areas R–2510A and R–2510B in the Vicinity of El Centro, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the using agency for restricted areas R–2510A and R–2510B in the vicinity of El Centro, CA from ''Commanding Officer, U.S. Navy Fleet Area Control and Surveillance Facility, San Diego, CA'' to ''U.S. Marine Corps, Commanding Officer, Marine Corps Air Station Yuma, Yuma, AZ''. This action does not change any boundaries, altitudes, times of designation, or activities conducted within the restricted areas.

DATES: Effective date 0901 UTC, May 16, 2024.

ADDRESSES: A copy of this final rule and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates the using agency listed for restricted areas R–2510A and R–2510B in the vicinity of El Centro, CA.

Background

The U.S. Department of the Navy requested that the Federal Aviation Administration amend the descriptions of restricted areas R–2510A and R–2510B by changing the using agency listed for each from ''Commanding Officer, U.S. Navy Fleet Area Control and Surveillance Facility, San Diego, CA'' to ''U.S. Marine Corps, Commanding Officer, Marine Corps Air Station Yuma, Yuma, AZ''. The request is the result of a realignment of air traffic control responsibilities for the area.

The Rule

This action amends 14 CFR part 73 by amending the using agency listed for restricted areas R–2510A and R–2510B from ''Commanding Officer, U.S. Navy Fleet Area Control and Surveillance Facility, San Diego, CA'' to ''U.S. Marine Corps, Commanding Officer, Marine Corps Air Station Yuma, Yuma, AZ''. This action is necessary in order to reflect the current organization tasked with using agency responsibilities for the restricted areas.

This is an administrative change that does not affect the boundaries, designated altitudes, times of designation, or activities conducted within restricted areas R–2510A and R–2510B; therefore, notice and public

procedure under 5 U.S.C. 553(b) are unnecessary.

Regulatory Notices and Analyses

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 Department of Transportation (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. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending the using agency information for restricted areas R–2510A and R–2510B, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5d, which categorically excludes from further environmental impact review the modification of the technical description of special use airspace (SUA) that does not alter the dimensions, altitudes, or times of designation of the airspace (such as changes in designation of the controlling or using agency, or correction of typographical errors). This airspace action is an administrative change to the description of restricted areas R–2510A and R–2510B to update the using agency name. It does not alter the restricted area dimensions, designated altitudes, times of designation, or use of the airspace. Therefore, this airspace action is not expected to result in any significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.25 [Amended]

■ 2. Section 73.25 is amended as follows:

* * * * *

R–2510A El Centro, CA [Amended]

By removing the existing using agency and substituting the following:

Using agency. U.S. Marine Corps, Commanding Officer, Marine Corps Air Station Yuma, Yuma, AZ.

R–2510B El Centro, CA [Amended]

By removing the current using agency and adding the following in its place:

Using agency. U.S. Marine Corps, Commanding Officer, Marine Corps Air Station Yuma, Yuma, AZ.

* * * * *

Issued in Washington, DC, on February 26, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–04361 Filed 2–29–24; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 461

RIN 3084–AB71

Trade Regulation Rule on Impersonation of Government and Businesses

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This final rule prohibits the impersonation of government, businesses, and their officials or agents in interstate commerce. This document contains the text of the final rule and the rule's Statement of Basis and Purpose (''SBP''), including a Regulatory Analysis.

DATES: This rule is effective April 1, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher E. Brown (202–326–2825), Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. Advance Notice of Proposed Rulemaking

On December 23, 2021, the Federal Trade Commission (''Commission'' or ''FTC'') published an advance notice of proposed rulemaking (''ANPR'') to address certain deceptive or unfair acts or practices of impersonation.[1] As part of the ANPR, the Commission requested comment on any issues or concerns relevant or appropriate to this rulemaking to combat impersonation of governments, businesses, or their agents, and whether and how to proceed with a notice of proposed rulemaking (''NPRM'').[2] The Commission took comments for 60 days, and received 164 comments from representatives from a broad spectrum of businesses, trade associations, government or law-enforcement organizations, and individual consumers, which are publicly available on this rulemaking's docket at *https://www.regulations.gov/docket/FTC-2021-0077/comments.* Commenters generally expressed support for the Commission's proceeding with the rulemaking. They also voiced deep concerns about the prevalence and harmfulness of both government and business impersonation. No commenter expressed the view that the Commission should not commence the rulemaking. Commenters also offered suggestions for the Commission's consideration in drafting the proposed rule and other recommendations in furtherance of the proposed rulemaking.

B. Notice of Proposed Rulemaking

Based on an extensive review of the comments received in response to the ANPR, the Commission's own history of enforcement, and other considerations that occurred after the ANPR's publication,[3] the Commission published the NPRM on October 17, 2022.[4] In the

NPRM, the Commission stated it has reason to believe impersonation of government, businesses, and their officials or agents is prevalent.[5] The Commission identified no disputed issues of material fact based on the comment record; explained its considerations in developing the proposed rule; solicited additional public comment thereon, including posing specific questions designed to assist the public in submitting comment; and provided interested parties the opportunity to request to present their position orally at an informal hearing.[6] Finally, the NPRM set out the Commission's proposed rule.

In response to the NPRM, the Commission received 78 comments from entities and individuals interested in the proposed rule, discussed in Section III.[7] Although some raised concerns and recommended specific modifications or additions to the Commission's proposal, the majority generally supported the rule proposed in the NPRM. Two commenters timely submitted requests for interested parties to make an oral statement at an informal hearing.[8]

C. Notice of Informal Public Hearing

On March 30, 2023, the Commission published an Initial Notice of Informal Hearing (''Notice of Hearing'').[9] The Notice designated the Commission's Chief Administrative Law Judge, D. Michael Chappell, to serve as the presiding officer of the informal hearing and stated that any member of the public wishing to speak at the informal hearing or make a documentary submission to be placed on the public rulemaking record (or both) should submit a comment on or before April 14, 2023.[10]

On May 4, 2023, Chief Judge Chappell presided over the informal hearing using video conferencing, which enabled the public to watch live from the Commission's website, *https://www.ftc.gov.* Because there were no disputed issues of material fact to resolve, the informal hearing included no cross examination or rebuttal submissions, and the presiding officer made no recommended decision. The informal hearing included oral statements from 14 interested parties.[11] The majority of commenters who presented oral statements at the informal hearing or filed documentary submissions generally expressed strong support for the Commission's proposed rule.[12] Several commenters, however, also expressed concern that the proposed rule language does not explain the circumstances under which the Commission would apply proposed § 461.4, which would prohibit providing the means and instrumentalities to commit violations of government and business impersonation. Some suggested alternative language imposing a scienter requirement to narrow the scope of this provision, discussed in Section III.D.

In crafting the final rule, the Commission has carefully considered the comments received in response to the NPRM and on the rulemaking record, which includes the oral statements and documentary submissions in response to the Notice of Hearing. The final rule contains some changes from the proposed rule. These modifications, discussed in detail in Section III, are based upon input from commenters and careful consideration of relevant law. Section III also discusses commenters' recommendations that the Commission declined to adopt, along with the Commission's reasons for rejecting them. Accordingly, the Commission adopts the proposed rule with limited modifications as discussed below. The rule will take effect April 1, 2024.

II. The Legal Standard for Promulgating the Rule

The Commission is promulgating 16 CFR part 461 pursuant to section 18 of the FTC Act, 15 U.S.C. 57a, the Administrative Procedure Act (''APA''), and Part 1, subpart B of the Commission's Rules of Practice.[13] This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Commission's Rules of Practice further provide that if the Commission determines to promulgate a rule, it will adopt a SBP, which must address three factors: (1) The prevalence of the acts or practices addressed by the rule; (2) the manner and context in which the acts or practices are unfair or deceptive; and (3) the economic effect of the rule, taking into account the effect on small businesses and consumers.[14] In this section of the preamble, the Commission summarizes its findings regarding each of these factors.

A. Prevalence of Acts or Practices Addressed by the Rule

In its ANPR, the Commission cited public data from the Consumer Sentinel Network database and described its enforcement record, demonstrating government and business impersonation scams are not only highly prevalent but increasingly harmful.[15] In the NPRM, the Commission also took notice of additional indications of prevalence that came after the ANPR's publication.[16] Specifically, the NPRM cited data from a broad spectrum of commenters (businesses, trade associations, and government or law-enforcement organizations) regarding the prevalence of government and business impersonation scams, which echoed the Commission's findings that these schemes are among the most common deceptive or unfair practices affecting U.S. consumers and businesses and continue to be a significant source of consumer injury.[17]

B. Manner and Context in Which the Acts or Practices Are Deceptive or Unfair

A representation, omission, or practice is deceptive if it is material and likely to mislead a consumer acting reasonably under the circumstances.[18] The most frequent allegations in the Commission's enforcement actions involving government and business impersonation pertain to defendants tricking consumers to pay money or disclose personal information by making, expressly or by implication, statements that misrepresent the defendants' identity.[19] Nearly as frequent are allegations of misrepresentations concerning defendants' affiliation with, endorsement or approval by, or other association with a government or business. The Commission has further found false threats of severe consequences and promises of benefits are additional deceptive tactics deployed by government and business impersonators. In the Commission's experience, such claims regarding identity, affiliation, or endorsement are material to consumers making their decision to trust impersonators. The numerous government and business impersonation complaints consumers submit to the Commission each year, as well as comments submitted in connection with this rulemaking proceeding, consistently reference these same concerns. Accordingly, the specific practices described in the preamble to the proposed rule reflect the type of conduct most commonly associated with deceptive and unfair practices pertaining to government and business impersonation.[20]

C. The Economic Effect of the Rule

As part of the rulemaking proceeding, the Commission solicited comment and data (both qualitative and quantitative) on the economic impact of the proposed rule and its costs and benefits.[21] In

issuing the final rule, the Commission has carefully considered the comments received and the costs and benefits of each provision, as discussed in more detail below in Section VI. The record demonstrates the most significant anticipated benefit of the final rule is the Commission's ability to obtain monetary relief. This is particularly critical because that ability was curtailed by the U.S. Supreme Court's decision in *AMG Cap. Mgmt., LLC* v. *FTC,* which holds that equitable monetary relief, including consumer redress, is not available under section 13(b) of the FTC Act.[22] Further, obtaining monetary relief based on violations of the final rule under section 19(b) of the FTC Act will be significantly faster than obtaining such relief under section 19(a)(2) without a rule violation.[23] By enabling the Commission to obtain monetary relief more efficiently, the final rule would also reduce the expenditure of Commission resources.[24] As an additional benefit, the rule enables the Commission to obtain civil penalties against violators.[25] The final rule also provides a benefit to businesses through increased deterrence of business impersonators, which reduces businesses' expenditure of resources associated with monitoring for and addressing impersonation.[26] Moreover, as the record and the Commission's law enforcement experience demonstrate, the final rule is unlikely to impose costs on any honest business, and may increase deterrence of impersonation scams, which would benefit consumers through a reduction in their total financial losses from these schemes.[27]

III. Response to Comments

The Commission received 78 comments in response to the NPRM from a diverse group of individuals, industry groups and trade associations, consumer organizations, and government agencies.[28] The Commission received 28 comments in response to the Notice of Hearing, including oral presentations from 14 commenters.[29] Commenters generally supported the proposed rule, recognizing the Commission's authority to protect consumers from the increasing number of government and business impersonation frauds targeting consumers.

In the NPRM, the Commission invited comment on any issues or concerns the public believes are relevant or appropriate to the Commission's consideration of the proposed rule.[30] The NPRM also posed eight specific questions for the public.[31] Some of these questions relate to the Paperwork Reduction Act (''PRA'') and Regulatory Flexibility Act (''RFA''), and are addressed in Sections V and VI, respectively.[32] The other questions, along with common issues or concerns relevant to the Commission's consideration of the proposed rule outside of the specific questions, are addressed in this section of the preamble.

A. Finalizing the Proposed Rule as a Final Rule

In Question 1 of the NPRM, the Commission asked whether it should finalize the proposed rule as a final rule, and how, if at all, it should change the proposed rule in promulgating the final rule.[33] The majority of commenters did not express a clear view regarding whether the Commission should adopt the proposed rule as final. Many of these commenters, however, did share their experience regarding the prevalence and harmfulness of various kinds of government and business impersonation frauds.[34] Some of these commenters complained more generally about various non-impersonation scams.[35] The majority of commenters that addressed Question 1 of the NPRM were substantially supportive of the proposed rule, but stopped short of urging the Commission to finalize the text of the proposed rule without modification. These commenters typically recommended either broadening or narrowing the scope or text of the rule in response to other specific questions asked in the NPRM or relevant to the Commission's consideration of the proposed rule.[36]

Six commenters explicitly addressed the Commission's question regarding finalizing the proposed rule as a final rule, and without recommending additional modifications to the text of the proposed rule, urged the Commission to do so.[37] Some of these commenters stated the proposed rule is in the public interest because it would allow for civil penalties against government and business impersonators, provide redress for victims of impersonation scams, and deter future bad acts.[38]

Several government agencies and trade associations explained how the proposed rule would benefit them, their members, or the people they serve. The United States Patent and Trademark Office (''USPTO'') described its experience of agency impersonation, and stated that reliance on the FTC's enforcement capabilities through such a rule would allow the USPTO to conserve and allocate its resources to different enforcement efforts that impact the USPTO and its stakeholders.[39] Similarly, the Marine Retailers Association of the Americas (''MRAA''), a trade association representing marine retailers, argued the benefits associated with finalizing the proposed rule would reduce the financial burden on businesses and improve trust among consumers.[40] The United States Copyright Office (''USCO'') expressed support for finalizing the proposed rule, arguing that doing so would allow the Commission to move more quickly to put a stop to impersonation scams.[41] The USPTO and the USCO explained they do not have law enforcement authority to remedy the harms resulting from bad actors impersonating the agencies, and USCO argued the proposed rule would foster public trust in the copyright system.[42] The Cellular Telecommunications and internet Association (''CTIA''), a trade association for wireless service providers, argued in favor of finalizing the proposed rule because its scope is ''targeted and judicious,'' and appropriately focused on the bad actors that harm consumers.[43]

Somos, Inc., which manages registry databases for the telecommunications industry, stated it ''strongly supports the Commission's proposed rules,'' but suggested the Commission explicitly clarify that spoofing a telephone number of a business or government entity to aid in that impersonation violates the rule.[44] The Commission is not persuaded that explicitly stating telephone spoofing, or any specific type of government or business impersonation, constitutes a violation of the rule is necessary.[45] Moreover, the Telemarketing Sales Rule (''TSR'') already bars telemarketers from ''failing to transmit. . .the telephone number and. . .the name of the telemarketer to any caller identification service in use by a recipient of a telemarketing call.'' [46] By definition, a spoofed telephone number is not the number of the telemarketer, and the Commission can rely on this prohibition to bring an enforcement action for violation of the TSR against a telemarketer that uses a spoofed number.

The Commission also received several comments that identified the lack of access to accurate information concerning domain name registrants (commonly known as ''WHOIS'' data) as a significant impediment to combatting the use of domain names to impersonate government and businesses.[47] These commenters expressed support for expanding the text or scope of the final rule to address this issue.[48] In particular, a few commenters urged the Commission to issue a final rule that requires domain name registrars to

collect, verify, maintain, and disclose accurate WHOIS data to the FTC and third-party victims on request for such information based on credible evidence of impersonation fraud.[49] The Coalition for Online Accountability (''COA''), a group advocating for online transparency and accountability, argued ''[t]here is no justification for the redaction of data of legal person registrants or the overwhelming denial of reasonable access to personal WHOIS data for legitimate third-party interests. . ..'' [50] Both the Messaging Malware Mobile Anti-Abuse Working Group (''M3AAWG'') and the Anti-Phishing Working Group (''APWG'') also suggested the Commission encourage Domain Name System (''DNS'') registries and registrars to engage in DNS mitigation and frequently impersonated entities to participate as ''trusted notifiers'' to address fraudulently registered domain names.[51]

The Commission declines to adopt commenters' suggestion that the final rule expressly reference in accompanying examples the use of domain names in impersonation schemes. Rather, the Commission here repeats what it previously stated in the NPRM and earlier in this SBP, that the following list of examples of conduct covered by the prohibition on the impersonation of government and businesses was intended to be illustrative, not exhaustive: (1) calling, messaging, or otherwise contacting an individual or entity while posing as a government or an officer or agent or affiliate or endorsee thereof, including by identifying a government or officer by name or by implication; (2) sending physical mail through any carrier using addresses, government seals or lookalikes, or other identifying insignia of a government or officer thereof; (3) creating a website or other electronic service impersonating the name, government seal, or identifying insignia of a government or officer thereof or using ''.gov'' or any lookalike, such as ''govusa.com''; (4) creating or spoofing an email address using ''.gov'' or any lookalike; (5) placing advertisements that pose as a government or officer thereof against search queries for government services; (6) using a government seal on a building, letterhead, website, email, vehicle, or other physical or digital place; (7) calling, messaging, or otherwise contacting an individual or entity while posing as a business or an officer or agent or affiliate or endorsee thereof, including by naming a business by name or by implication, such as ''card member services'' or ''the car dealership''; (8) sending physical mail through any carrier using addresses, seals, logos, or other identifying insignia of a business or officer thereof; (9) creating a website or other electronic service impersonating the name, logo, insignia, or mark of a business or a close facsimile or keystroke error, such as ''ntyimes.com,'' ''rnicrosoft.com,'' ''microsoft.biz,'' or ''*carnegiehall.tixsales.com*''; (10) creating or spoofing an email address that impersonates a business; (11) placing advertisements that pose as a business or officer thereof against search queries for business services; and (12) using, without authorization, a business's mark on a building, letterhead, website, email, vehicle, or other physical or digital place.[52] Accordingly, the Commission finds the final rule is drafted with sufficient clarity and flexibility to address the unauthorized use of internet identifiers, including but not limited to domain names.

Only one commenter suggested in response to Question 1 of the NPRM that the proposed rule should not be finalized.[53] The Americans for Prosperity Foundation (''AFPF''), a 501(c)(3) nonpartisan education organization, argued the Commission should ''abandon its Section 18 rulemaking ambitions, instead refocusing its efforts on case-by-case enforcement actions in federal court in cases involving concrete harm to consumers.'' [54]

The Commission disagrees with the AFPF's suggestion that the section 18 rulemaking process is too difficult or unwieldy to address many of the unfair or deceptive acts or practices prevalent in commerce. In 1975, Congress passed the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act laying out specific procedures for the promulgation of ''Trade Regulation Rules'' to protect consumers in a dynamic and changing economic landscape.[55] The Commission's regulations at 16 CFR part 1, subpart B, respect the underlying statutory requirements of section 18, which provide ample transparency and opportunity for public participation in the promulgation of Trade Regulation Rules. The Commission intends therefore to fulfill its mission to protect against unfair or deceptive acts or practices in or affecting commerce and to provide consumers and businesses with due process, clarity, and transparency while crafting the rules to do so. Accordingly, the Commission rightfully responds to Congress's grant of authority by initiating this rulemaking.

The AFPF also expressed various criticisms specific to the language of the proposed rule and recommended several suggested revisions discussed in greater detail in Sections III.C and III.D below.

Following review of all comments and careful consideration of the relevant law, the final rule issued by the Commission contains some minor changes from the proposed rule, as discussed in Section III.

B. Relevant Evidence Regarding Provisions of the Proposed Rule, Prevalence, Impact and Alternative Proposals

In the ANPR, the Commission asked specific questions about the prevalence of impersonation fraud, and requested the data source commenters relied upon for formulating their answer(s).[56] The ANPR also asked specific questions regarding how to craft a proposed rule to maximize the benefits to consumers and minimize the costs to businesses, and what alternatives to regulations the Commission should consider in addressing impersonation frauds.[57] In Question 2 of the NPRM, the Commission posed these same or nearly identical specific questions regarding each different provision of the proposed rule.[58] Six commenters specifically addressed these questions.[59] Each of these commenters described various types of government and business impersonation scams common to their own experience or industry in support of their view that such frauds are highly prevalent.[60] For example, the Toy Association noted various business impersonation scams experienced by its members, including counterfeit or non-compliant toys, falsified documents regarding endorsement and affiliation related to counterfeit toys, false solicitation and phishing schemes collecting customer information, and domain impersonation.[61] Similarly, the USPTO and USCO described several examples of government impersonation scams involving the trademark and copyright registration processes, respectively, and included illustrative examples as attachments with their public comment.[62]

Other commenters particularly concerned with online business impersonation cited data from studies or reports regarding trends in these kinds of impersonation frauds, and recent examples of phishing attacks against consumers through the impersonation of recognized online companies in support of their arguments regarding prevalence.[63] A small number of

commenters addressed the impact (including any benefits and costs) on consumers, governments, and businesses, discussed in more detail in Section VI.

Only one commenter suggested an alternative proposal for the Commission's consideration.[64] Specifically, the M3AAWG recommended as an alternative to the means and instrumentalities provision in proposed § 461.4 that the Commission ''identify best practices or safe harbors to incentivize prompt mitigation efforts and sound verification techniques'' to address the use of domain names in business impersonation schemes.[65] M3AAWG argued this alternative to regulation would avoid the risk of inadvertently imposing ''secondary or intermediary liability against legitimate businesses, technologies or services'' exploited by impersonators.[66]

Upon review of the comments received in response to Question 2 of the NPRM, the Commission concludes such comments support its own findings that government and business impersonation schemes are both prevalent and harmful. The Commission declines at this time to adopt M3AAWG's alternative proposal for § 461.4. As discussed in Section III.D, the Commission is continuing to review comments and records relevant to the means and instrumentalities provision in proposed § 461.4 to determine whether additional action or protections are warranted and is requesting additional public comment through a SNPRM, published elsewhere in this issue of the **Federal Register**.

C. Clarity of Prohibitions Against Impersonation of Government & Businesses

In Question 5 of the NPRM, the Commission solicited comment regarding whether the proposed rule's one-sentence prohibitions against impersonation of government in § 461.2 and against impersonation of businesses in § 461.3 are clear and unambiguous, and how, if at all, they should be improved.[67] The Commission received several comments that addressed this question directly [68] or indirectly.[69] Two commenters considered the one-sentence prohibitions to be clear and unambiguous and/or deferred to the Commission's construction, but suggested certain additions or modifications.[70] For example, the USCO suggested the Commission consider whether the definition of ''officer,'' which covers representatives of both governments and businesses, should be bifurcated into two separate and more specific terms to define representatives of governments and businesses, respectively.[71] No other commenter suggested a revision to the definitions in proposed § 461.1. The USPTO suggested the Commission broaden the exemplary ''list of matter'' used to impersonate a government to specifically reference ''logos.'' [72] In support of this recommendation, the USPTO noted ''the use of logos'' was explicitly identified in the NPRM's examples of unlawful conduct that would be covered by the prohibition against business impersonation in proposed § 461.3, but not in the NPRM's examples of unlawful conduct that would be covered by the prohibition of government impersonation in proposed § 461.2. The USPTO further asserted government agencies also ''use logos in addition to official seals and insignia,'' and provided an illustrative example of impersonators misusing the USPTO's logo.[73]

Three commenters indicated the language of proposed §§ 461.2 and 461.3 was vague or provided inadequate guidance, and warranted modification.[74] Some commenters raised constitutional concerns based on the purported overbreadth of the one-sentence prohibitions.[75] These commenters' constitutional arguments addressed two primary considerations: (1) whether the proposed rule provides due process notice; [76] and (2) whether it encroaches upon free speech protected under the First Amendment.[77] The AFPF stated the proposed rule is an ''open-ended regulation,'' arguing it ''fails to provide constitutionally adequate notice of required or prohibited conduct'' and otherwise falls short of section 18's specificity requirements.[78] Other commenters wary of inadvertent intrusions on protected speech asserted any final prohibition should exempt innocent behavior such as parody [79] and non-commercial or otherwise legitimate speech.[80]

In his documentary submission in response to the Notice of Informal Hearing, William MacLeod echoed concerns he previously expressed in response to the NPRM that the language in proposed §§ 461.2 and 461.3 ''depart[s] from the standards of deception that the Commission applies under Section 5.'' [81] MacLeod noted that: ''[i]ts terms do not include 'deception' or 'fraud' or critical elements of the FTC's deception policy statement.'' [82] He raised additional concerns about ''impersonations and affiliations [that] can be false, but also unbelievable.'' [83] MacLeod argued that the prohibitions, as written, are too broad and would proscribe non-deceptive acts or practices, such as ''fictional depictions'' in television advertisements.[84]

Raising First Amendment concerns, the AFPF similarly asserted that the proposed rule's ''falsely pose as'' language, ''read literally,'' would impose civil penalties on ''utterly innocuous conduct'' and ''would appear to make it unlawful for anyone to dress up as an FTC Commissioner, politicians, or . . . a Microsoft executive and attend a Halloween party.'' [85] It also expressed concern that the proposed prohibitions did not require ''materiality,'' ''consumer harm,'' or ''connection to interstate commerce.'' [86] Several commenters suggested alternative language to cure what they perceived to be the overbreadth of the prohibition provisions. For example, M3AAWG recommended that the final rule adopt a definition of ''impersonation'' that mirrors the definition of ''criminal impersonation'' in 18 U.S.C. Chapter 43.[87] M3AAWG asserted that such a definition would narrow the scope of the rule to cover only those bad actors with ''clear intent and specific knowledge'' of prohibited acts.

MacLeod proposed narrowing the focus of the final rule by adopting language that specifies particular prohibited practices or the *mens rea* of its intended targets.[88] The AFPF agreed with MacLeod and suggested that the Commission revise the proposed rule to ''explicitly incorporate Section 5's statutory prohibition . . . [and] requirements set forth in the Commission's Deception Statement.'' [89]

After analyzing and considering the comments, the Commission is persuaded that the language of the final rule should adhere more closely to the language of section 5 of the FTC Act to avoid any potential confusion about the scope of the rule. The Commission believes that these revisions sufficiently address some commenters' concerns that the language of the proposed rule put it in conflict with Due Process requirements and the First Amendment.

The Commission emphasizes that it does not intend for the final rule to regulate non-commercial speech. To adhere more closely to the language of section 5 of the FTC Act and case law, the Commission has revised the final regulatory text to incorporate relevant language from section 5. Specifically, the Commission has replaced ''unlawful'' with ''unfair or deceptive act or practice,'' and added ''materially'' and ''in or affecting commerce'' in §§ 461.2 and 461.3. These changes make it abundantly clear that the scope of the final regulatory text is coterminous with the scope of the FTC's authority under

the FTC Act, and they clearly specify the misconduct prohibited by the final rule. Accordingly, false impersonations or misrepresentations that are not material to a commercial transaction, such as impersonation in purely artistic or recreational costumery or impersonation in connection with political or other non-commercial speech, are not covered by the final rule.

The Commission concludes that it is unnecessary to divide the definition of ''officer'' into two separate terms as suggested by the USCO. Section 461.1 defines ''officer'' to ''include[ ] executives, officials, employees, and agents,'' which the Commission believes appropriately describes and covers both government and business representatives.

As previously stated, the NPRM's list of examples of prohibited conduct covered by the rule is intended to be illustrative, not exhaustive, and therefore, the Commission declines to adopt the USPTO's suggestion that it enlarge that exemplary ''list of matter.'' Rather, the Commission maintains that not including specific prohibitions in the regulatory text provides it with sufficient flexibility to address the many types of ''matter'' (including objects, items, logos, insignia, etc.) used to impersonate governments and businesses alike, which are too numerous to list.

The Commission declines to adopt a definition of ''impersonation'' that reflects a criminal regulatory scheme as proposed by M3AAWG. The FTC Act does not include a *mens rea* requirement, and there is no evidence in the record that the imposition of such a requirement is warranted. Furthermore, while intent is not required under the rule or the FTC Act, in any action seeking civil penalties for violation of the rule, the Commission will need to establish ''actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule.'' [90]

The Commission rejects the recommendation by both MacLeod and AFPF to incorporate the FTC Deception Policy Statement into the final rule. Nevertheless, as discussed earlier in this Section III.C, informed by MacLeod's and AFPF's comments, the Commission has revised the regulatory text of §§ 461.2 and 461.3 to mirror the language of section 5 of the FTC Act more closely. In particular, the reference to ''unfair or deceptive act or practice,'' and the inclusion of materiality and interstate commerce requirements should address commenters' concerns that this rule might be read to cover impersonation in connection with artistic costumery, parody, or other non-commercial speech.[91] The Commission further notes that, by the terms of these sections, a court must find that the alleged defendant made an express or implied misrepresentation regarding material information for §§ 461.2 and 461.3 to be violated. For an express or implied misrepresentation regarding material information to be made in violation of the FTC Act and this rule, there must be a representation that misleads consumers acting reasonably under the circumstances regarding material information. Thus, while the Commission rejects the recommendation by both MacLeod and AFPF to incorporate the FTC Deception Policy Statement into the final rule, by incorporating the changes above, the Commission has ensured that the final rule is consistent with the Deception Policy Statement, is consistent with other relevant Commission rules, and provides further specificity regarding the prohibited acts and practices under section 5 of the FTC Act.

D. Prohibition Against Providing Means and Instrumentalities

In Question 6 of the NPRM, the Commission asked whether the final rule should contain the prohibition in proposed § 461.4 against providing the means and instrumentalities for violations against government or business impersonation. The Commission received more than 20 comments that expressly addressed this question.[92] Many of the sentiments reflected in these comments were also echoed by several commenters that presented oral statements in response to the Notice of Informal Hearing.[93]A few commenters arguing for the importance of holding intermediaries accountable for enabling or promoting impersonation schemes encouraged the Commission to finalize the text of the proposed provision without modification.[94] These commenters specifically argued that finalizing the proposed § 461.4 could help to combat impersonation schemes perpetrated by foreign-based scammers—beyond U.S. court jurisdiction—that obtain services from U.S.-based instrumentalities, such as payment processors and internet service providers.[95]

Addressing means and instrumentality liability, both the AFPF and MacLeod reiterated their concerns referenced in Section III.C, regarding section 18's specificity requirements, due process notice, free speech, and conformity to the FTC's Deception Policy Statement.[96] Most commenters who addressed Question 6 expressed support for means and instrumentalities liability, but with some concern or suggested modifications. Some supportive commenters cautioned that the proposed means and instrumentalities provision could be read too broadly.[97] Others expressed the concern that without a specific scienter or knowledge requirement, the proposed rule provision runs the risk of imposing strict liability against innocent and unwitting third-party providers of services or products.[98] Accordingly, several commenters urged the Commission to clarify the scope of means and instrumentalities liability or explicitly include a specific knowledge requirement in the final rule provision.[99]

For example, the Consumer Technology Association (''CTA''), a trade association representing the U.S. consumer technology industry, stated that the Commission's explanation and examples of the ''means and instrumentalities'' provision in the NPRM seem to limit its applicability, but such limitation ''is not squarely reflected in the text of the proposed rule.'' [100] The CTA therefore urged the FTC to clarify that ''means and instrumentalities'' liability applies only ''to entities that have knowledge or consciously avoid knowing that they are making representations being used to commit impersonation fraud.'' USTelecom, a trade association representing the broadband technology industry, argued that a discrepancy exists between the case law, the NPRM's discussion of means and instrumentality liability, and the proposed rule provision. It urged the Commission to ''adjust the proposed language in § 461.4 to codify the requirement that the person *has knowledge or reason to expect* it is providing the means and instrumentalities . . .'' (emphasis in original).[101] Similarly, the American Bar Association Section of Intellectual Property Law suggested that the Commission ''explicitly include [in § 461.4] the language referenced in the [NPRM] from *Shell Oil Co.,* 128 F.T.C. 749 (1999)—acting with 'knowledge or reason to expect that consumers may possibly be deceived as a result.' '' [102]

Other commenters argued that inclusion of a scienter requirement is a necessary but not sufficient modification of the proposed language to impose means and instrumentalities liability. For example, the internet & Television Association (''NCTA''), a trade association for the United States cable television industry, argued that such ''liability requires both providing *deceptive* means and instrumentalities, *e.g.,* providing false or misleading

claims or counterfeit items, and *actual knowledge* that the deceptive representations or goods will be used to commit impersonation violations'' (emphasis in original).[103] Likewise, M3AAWG advocated that, in addition to a ''knowledge or reason-to-know test,'' primary liability under a revised § 461.4 should also require that the provision of such means and instrumentalities be done willfully or in bad faith, and with clear intent and specific knowledge.[104]

A few commenters urged the Commission to adopt a final rule that explicitly recognizes specific or defined ''means and instrumentality'' violations perpetrated in connection with impersonation frauds, such as the use of legal process documents [105] or manipulated media technologies (*i.e.,* deepfakes) [106] or failure to disclose WHOIS data.[107]

Based upon the comments received on the proposed provision regarding means and instrumentalities, the Commission has decided that this specific provision warrants further analysis and consideration; thus, the Commission has decided not to finalize proposed § 461.4. The Commission is not aware of any other rule, whether issued pursuant to section 18 or APA rulemaking authority, that identifies a means and instrumentalities violation. The Commission notes that it has used means and instrumentalities allegations as a type of deception to establish primary liability in the absence of privity between the defendant and the deceived persons, albeit rarely, in connection with matters that involve impersonation.[108] Pending further analysis and consideration, the Commission declines to adopt proposed § 461.4 at this time. The Commission is still considering the provision regarding means and instrumentalities, as well as issues related to the impersonation of individuals or entities other than governments and business in interstate commerce and is requesting public comment through a Supplemental Notice of Proposed Rulemaking (''SNPRM''), published elsewhere in this issue of the **Federal Register**.

E. Inclusion of Prohibition Against Impersonating Nonprofits

In response to the ANPR, the Commission received a number of comments that urged the Commission to include ''nonprofit'' entities in the proposed rule's definition of businesses that can be impersonated.[109] The Commission agreed with these comments, and consequently, defined a ''business'' that may be impersonated to include nonprofits in § 461.1 of the proposed rule, notwithstanding the fact that the Commission is authorized to sue a corporation only when the corporation is ''organized to carry on business for its own profit or that of its members.'' [110] As the Commission explained in the NPRM, the reason for doing so is because for profit businesses may impersonate nonprofit business.[111] In Question 7 of the NPRM, the Commission solicited comment regarding whether any final rule should keep the prohibition against impersonating nonprofit organizations.[112] The Commission received more than a dozen comments that specifically addressed this question, and each of them expressed support for a final rule keeping the prohibition against impersonating nonprofits.[113] None of the comments responding to the NPRM or Notice of Hearing opposed doing so. The vast majority of commenters who addressed this question were themselves nonprofit organizations operating as trade associations, and referenced their own experience with impersonation frauds in support of a final rule keeping the prohibition against impersonating nonprofits.[114] Several commenters expressed the view that nonprofits are often the subject of impersonation scams in the same way as for profit businesses and government agencies.[115] Other commenters asserted that impersonation of nonprofits could be uniquely harmful because bad actors ''prey[ ] on the goodwill of individuals attempting to make donations, and misappropriate[ ] those donations to corrupt private actions.'' [116] Some commenters noted that nonprofits are particularly susceptible to being impersonated in scams involving affiliation or endorsement claims because nonprofits often offer awards or seals of approval.[117]

Finally, two commenters cited trademark law in support of keeping nonprofits in the definition of business and a final rule that includes the prohibition against impersonating nonprofits. Specifically, both INTA and the Toy Association stated that trademark law has ''long recognized that the misuse of names of non-profit organizations can lead to harmful consumer confusion.'' [118] In INTA's and the Toy Association's view, the same applies with respect to impersonation schemes; thus, the final rule should also make no distinction between for profit and nonprofit businesses.

Based upon the record, including public comments in response to Question 7 of the NPRM, the Commission has determined that the final rule will retain the definition of ''business'' in § 461.1 that includes nonprofits and the prohibition against impersonating nonprofit organizations in § 461.3.

F. Inclusion of Individuals or Entities Other Than Government and Business Impersonators

In the NPRM, the Commission asked whether the proposed rule should be expanded to address the impersonation of individuals or entities other than governments and business in interstate commerce.[119] The NPRM identified romance and grandparent impersonation scams as illustrative, but non-exhaustive, examples of other types of impersonation fraud, and solicited further comment regarding their prevalence and impact, and alternative proposals to regulation. Six commenters specifically addressed these questions, and each of them stated that the Commission should expand the reach of the proposed rule to extend beyond government and business impersonators.[120] Some commenters asserted that fraudsters often impersonate individuals in similar ways they impersonate government and businesses.[121] In support of expanding the rule, several commenters argued that romance and grandparent impersonation scams were harmful and prevalent, citing to data from the FTC and other sources showing a steady increase in the number of consumer reports and median individual losses for such scams.[122] A comment submitted by a group of students at Rutgers Law School asserted that older consumers are susceptible to ''interpersonal confidence fraud and romance scams'' and provided relevant data demonstrating that older consumers may be more likely to fall victim to these kinds of impersonation than to government impersonation.[123] Several commenters also stated that while the number of reports of these two types of impersonation scams are not as high as government and business impersonation, they are likely underreported, and that median individual losses are often higher.[124] The AARP stated that, ''[o]f all fraud activity, romance scams and scams impersonating a family member in trouble are the most insidious, given the emotional devastation that combines with often significant financial losses.'' [125] A joint comment submitted by several consumer and privacy advocacy organizations argued that such evidence ''should be sufficient justification'' for the Commission to ''add a subsection to proposed Section 461 to cover 'Impersonation of Individuals.' '' [126]

A few commenters discussed the prevalence and harmfulness of other kinds of impersonation scams as support for expanding the rule beyond government and businesses to include individuals. For example, the NCTA stated that its member companies had observed an increase in sophisticated residential IP address scams that impersonate online subscribers for illegal purposes such as piracy and fraud.[127] NCTA encouraged the Commission to consider a new rule to prohibit impersonation of individuals through ''unauthorized use of an individual's online credentials, accounts, IP addresses, and digital networks.'' [128] The Recording Industry Association of America (''RIAA'') described impersonation scams involving offers of NFTs and mobile apps suggesting affiliation with sound recording artists and phishing scams where third parties claimed to be a music artist's manager or producer.[129] RIAA recommended that the Commission expand the rule to include the following: ''[I]t [is] unlawful to falsely pose as or to misrepresent, directly or by implication, affiliation with, including endorsement or sponsorship by, an individual, for financial gain.'' [130]

The Rutgers Law Students noted the prevalence of social media, and profiles of celebrities and influencers in current modes of online communication, arguing that it would be a ''grave oversight'' to omit persons with such notable identities from a rule prohibiting impersonation.[131] The students also argued that individuals are more likely than government agencies or businesses to suffer direct harm to their identities from impersonation scams and less likely to be able to repair the reputational injuries.[132] Accordingly, they proposed that the Commission add another section to the rule with language prohibiting the impersonation of ''any person'' that parallels the language in §§ 461.2 and 461.3 prohibiting the impersonation of government and businesses, respectively.[133] The students further stated that this additional provision ''closes a loophole'' that proposed §§ 461.2 and 461.3 leave open regarding the impersonation of former government and business officials.[134] Finally, the students concluded that adding such a narrowly drafted provision would not burden honest businesses or individuals, and would benefit consumers because the median individual losses for other kinds of impersonation frauds are often greater than for government and business impersonation.[135] Both the students and the NCTA agreed that expanding the proposed rule to prohibit impersonation of individuals would not impact recreational or comedic impersonations of individuals in television or film.[136]

Upon consideration of the comments received in response to Question 8 of the NPRM and all relevant records and data, the Commission is seeking additional public comment about potentially expanding part 461 to cover impersonation of individuals or entities other than governments and businesses in interstate commerce in a SNPRM published elsewhere in this issue of the **Federal Register**.[137]

G. Requiring Domain Name Registrars To Collect, Verify, Maintain, and Disclose Accurate WHOIS Data

The Commission received several comments that identified the lack of access to accurate information concerning domain name registrants (commonly known as ''WHOIS'' data) as a significant impediment to combatting the use of domain names to impersonate government and businesses.[138] These commenters expressed support for expanding the text or scope of the final rule to protect consumers from this increasingly prevalent impersonation scheme.[139] In particular, a few commenters urged the Commission to issue a final rule that requires domain name registrars to collect, verify, maintain, and disclose accurate WHOIS data to the FTC and third-party victims on request for such information based on credible evidence of impersonation fraud.[140] As previously noted, the COA argued that the redaction or denial of reasonable access to WHOIS data is unjustified.[141] Both M3AAWG and APWG also suggested that the Commission encourage DNS registries or registrars to engage in DNS mitigation and frequently impersonated entities to participate as ''trusted notifiers'' to address fraudulently registered domain names.[142]

Because the deceptive use of internet domain names is already covered under the rule, the Commission declines to adopt commenters' suggestion that the final rule expressly reference in the text or accompanying examples the use of domain names in impersonation schemes. As previously noted in Section III.A, the NPRM's preamble contained a list of examples of conduct covered by the prohibition on the impersonation of government and businesses that was intended to be illustrative, not exhaustive.[143] Such a comprehensive list would be both impossible and would not provide the trade regulation rule with the flexibility to accommodate changes in the marketplace and scammers' behavior. The Commission finds therefore that the final rule is drafted with sufficient clarity and flexibility to address the unauthorized use of internet identifiers, including but not limited to, domain names. Furthermore, the Commission declines to issue a final rule that imposes affirmative requirements upon domain name registrars which is beyond the purview of this rulemaking and doing so arguably would place an impracticable burden upon consumers to know about and verify the trustworthiness of such WHOIS data.

H. Comments Regarding Limitation of Remedies

A small number of commenters urged the Commission to clarify that any final rule regarding impersonation would not limit any rights and remedies already available to businesses and consumers that have been the subject of impersonation.[144] For example, notwithstanding its support of the Commission's rulemaking to address impersonation, the American Bar Association Section of Intellectual Property Law asserted that many government impersonation scams should be referred to the Department of Justice for criminal prosecution, and therefore, cautioned that any regulatory approach ''not dilute the impetus for a criminal law solution.'' [145] Other commenters suggested that the Commission clarify that any final rule is not intended to limit any existing private right of action or civil remedies.[146] Specifically, the Toy Association and INTA both advocated that any final rule on impersonation not be interpreted as limiting the rights and remedies available to trademark owners under the Lanham Act and the Anti-Cybersquatting Consumer Protection Act. INTA further proposed that the Commission issue a clarification that any final rule is intended only to complement—not expand or contract—the legal protections available to private parties under the entire body of federal or state trademark and unfair competition law.[147]

By issuing the final rule regarding government and business impersonation, the Commission does not preempt or intend to preempt action in the same area, which is not inconsistent with this final rule, by any federal, state, municipal, or other local government. This final rule does not annul or diminish any rights or remedies provided to consumers or businesses by any federal, state law, municipal ordinance, or other local regulation, insofar as those rights or

remedies are equal to or greater than those provided by this final rule.

IV. Final Rule

For the reasons described above, the Commission has determined to adopt the provisions of proposed § 461.1 as initially proposed, and the provisions of §§ 461.2 and 461.3 with clarifying modifications. The Commission declines to finalize proposed § 461.4 at this time.

Specifically, the Commission concludes that the proposed definition of ''officer'' is sufficient to cover both government and business representatives, and therefore, need not be divided into two separate terms. Further, the final rule includes a definition of ''materially''—which has been used in other section 18 rules—to avoid potential confusion or potential perceived conflict with non-commercial speech. For these same reasons, the final rule replaces ''unlawful'' with ''unfair or deceptive act or practice'' and adds ''materially'' and ''in or affecting commerce'' in §§ 461.2 and 461.3. Such revised language further clarifies that the rule conforms to the well-established standards for deception and unfairness under the FTC Act. Finally, the Commission declines to finalize the proposed § 461.4 provision regarding means and instrumentalities at this time because further analysis and consideration is warranted based on the record, including comments. The Commission is requesting additional public comment on this provision, and on issues related to the impersonation of individuals or entities other than governments and business in interstate commerce, through a SNPRM, published elsewhere in this issue of the **Federal Register**.

V. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.,* requires federal agencies to seek and obtain Office of Management and Budget (''OMB'') approval before undertaking a collection of information directed to ten or more persons. In Question 3 of the NPRM, the Commission asked commenters whether the proposed rule contained a collection of information.[148] No comments responding to the NPRM or Notice of Hearing addressed this question. While the Commission has revised the rule based on the comments it received, it has not added any new requirements that would collect information from the public. Accordingly, the Commission has determined that there are no new requirements for information collection associated with this final rule.

VI. Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, the Commission, when it promulgates a final rule, must issue a ''final regulatory analysis.'' [149] The required contents of this final regulatory analysis are: (1) ''a concise statement of the need for, and the objectives of, the final rule''; (2) ''a description of any alternatives to the final rule which were considered by the Commission''; (3) ''an analysis of the projected benefits and any adverse economic effects and any other effects of the final rule''; (4) ''an explanation of the reasons for the determination of the Commission that the final rule will attain its objectives in a manner consistent with applicable law and the reasons the particular alternative was chosen''; and (5) ''a summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.'' [150] Additionally, the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires an agency to provide a Final Regulatory Flexibility Analysis (''FRFA'') with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[151]

The NPRM included an Initial Regulatory Flexibility Analysis (''IRFA'') even though the Commission did not expect that the proposed rule would have a significant economic impact on a substantial number of small entities.[152] The Commission invited public comment on the proposed rule's effect on small entities to ensure that no significant impact would be overlooked.[153]

The FTC does not expect that the final rule will have a significant economic impact on a substantial number of small entities, and this SBP serves as notice to the Small Business Administration of the agency's certification of no significant impact. The final rule imposes no disclosure or recordkeeping requirements. As such, both the burdens imposed on small entities and the economic impact of the final rule are likely to be minimal, if any. Furthermore, as noted in the IRFA, the rule does not change the law regarding the legality of government and business impersonation, which are already prohibited by section 5 of the FTC Act.[154] Although the Commission certifies the final rule would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, it is appropriate to conduct the following FRFA,[155] which incorporates the Commission's initial findings, as set forth in the NPRM,[156] addresses the required contents of the final regulatory analysis, and describes the steps the Commission has taken in the final rule to minimize its impact on small entities.

A. Concise Statement of the Need for, and Objectives of, the Final Rule

Based upon the record, including public comments, the Commission is implementing the rule to expand the remedies available to it to combat government and business impersonation deception. Throughout this rulemaking proceeding, the Commission has described how the U.S. Supreme Court decision in *AMG Cap. Mgmt., LLC* v. *FTC,* 141 S. Ct. 1341, 1352 (2021) overturned how section 13(b) of the FTC Act had historically been understood for 40 years to provide equitable monetary relief, and made it significantly more difficult for the Commission to obtain money for injured consumers.[157] The objective of this final rule is to make available a shorter, faster and more efficient path for recovery of money for injured consumers directly through federal court action in Commission enforcement actions involving impersonation of government or business.[158] Further, the rule would deter illegal impersonation and allow for the imposition of civil penalties, where appropriate.[159]

B. Discussion of Significant Alternatives the Commission Considered That Would Accomplish the Stated Objectives of the Final Rule and That Would Minimize Any Significant Economic Impact of the Final Rule on Small Entities

Through the NPRM, the Commission requested public comment on what impact (including costs) will be incurred by existing and future businesses to comply with the proposed rule, and whether the Commission should consider alternative proposals to the proposed rule.[160] This information was requested by the Commission to minimize the final rule's burden on all businesses, including small entities. As explained throughout this SBP, the Commission has considered the comments and alternatives proposed by commenters and finds the final rule will not create a significant economic impact on small entities.[161] Indeed, the type of deception that will be unlawful under the final rule is already unlawful under the FTC Act, but the final rule would allow the Commission to obtain monetary relief more efficiently than it could solely under section 19(a)(2) of

the FTC Act (*i.e.,* without a rule violation). Accordingly, the Commission does not propose any specific small entity exemption or other significant alternatives.

C. Summary of Significant Issues Raised by the Public Comments in Response to the Preliminary Regulatory Analysis and IRFA

None of the comments received during the public comment period raised any significant issues in response to the preliminary regulatory analysis required pursuant to section 22 of the FTC Act.[162] In the IRFA, however, the Commission sought comment regarding the impact of the proposed rule and any alternatives the Commission should consider, with a specific focus on the effect of the rule on small entities. In the NPRM, the Commission reiterated this request for comment in Question 4, asking whether the proposed rule, if promulgated, would have a significant impact on a substantial number of small entities. Two commenters that specifically addressed the impact of the proposed rule on small entities stated it would have a beneficial economic impact by reducing the time and financial burden small entities expend on fighting impersonation frauds.[163] One commenter urged the Commission not to implement a final rule that would require third-party providers of government filing services to include extensive disclosures in their marketing materials, arguing such disclosure requirements could lead to small businesses declining the offered services and falling out of compliance with government filing obligations.[164] This commenter, however, did not identify any proposed disclosure requirements that were the subject of his concern, nor does the Commission impose any such disclosure requirements in connection with the final rule. None of the comments responding to the NPRM or Notice of Hearing disputed the analysis in the IRFA. Finally, the Small Business Administration did not submit comments.

After reviewing the public comments on the proposed rule, as discussed throughout this SBP, the Commission concludes the final rule will not unduly burden small entities. The Commission's explanation in the IRFA regarding the proposed rule is true of the final rule—it only constitutes a significant economic impact for small entities violating existing law, which are not entitled to procedural protections when agencies consider rulemaking.[165]

D. Analysis of Projected Benefits and Adverse Effects of the Final Rule

In the NPRM, the Commission invited public comment and data on any benefits and costs of proceeding with the rulemaking to inform a final regulatory analysis.[166] In issuing the final rule, the Commission has carefully considered the comments received and the costs and benefits of each provision. As discussed throughout this SBP, the Commission believes, and the record demonstrates, the final rule would provide several benefits to consumers, businesses, and competition, and help preserve agency resources, without imposing any significant adverse effects.

The Commission's explanation in the IRFA regarding the proposed rule is true of the final rule—it is difficult to quantify with precision what all its benefits may be, but it is helpful to begin with the scope of the problem the final rule would address, and then describe the benefits qualitatively. As discussed in the NPRM, reported consumer losses due to government impersonation topped $445 million in 2021;[167] and as anticipated, remained large, and even increased substantially, with total consumer losses of $513 million reported in 2022 and more than $483 million for the first ten months of 2023.[168] Similarly, the annual consumer loss reported due to business impersonation has increased from $453 million in 2021 to $670 million in 2022.[169] Accordingly, the most significant anticipated benefit of the final rule is that it will allow the Commission to provide monetary relief to victims of rule violations and seek civil penalties against violators.[170] Furthermore, the final rule should reduce economic harm resulting from impersonation because its potential deterrent effects make it less likely impersonators get to keep their ill-gotten gains and more likely they must pay civil penalties.

The final rule also would provide the benefit of a shorter path to obtaining consumer redress because the Commission could directly pursue in federal court section 19 remedies in government and business impersonation enforcement actions that do not implicate an existing rule. The availability of more immediate consumer redress in federal court under section 19 would allow the Commission to reduce the expense of litigating and minimize the litigation fora and scope. The Commission could then apply the savings of these enforcement resources to investigating and, where the facts warrant, bringing enforcement actions in additional impersonation matters.

The final rule also would benefit businesses whose brands are harmed by impersonators.[171] As several commenters have mentioned, a final rule that would allow the Commission to bring enforcement actions more efficiently against impersonators would save businesses the time and other resources dedicated to monitoring and combatting these kinds of deception.

The record is devoid of any evidence suggesting the final rule would cause harm or adversely impact economic conditions.

E. Description and an Estimate of the Number of Small Entities to Which the Final Rule Will Apply, or Explanation Why No Estimate Is Available

Small entities engaging in the impersonation of government and business potentially may be found across a variety of industries and economic sectors, but industry and sector data do not identify entities by such conduct. Accordingly, it is not possible to estimate the number of small entities to which the final rule will apply. However, because the Commission finds the final rule will not impose any recordkeeping or other compliance costs on covered entities, the Commission concludes the final rule will not have a significant impact on a substantial number of small entities, notwithstanding the lack of data on how many small entities will be covered by the final rule.

F. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements of the Final Rule and the Type of Professional Skills That Will Be Necessary To Implement the Final Rule

The final rule does not have any reporting or recordkeeping requirements.[172] As explained previously, the final rule would apply to no small entities other than small entities violating existing law, and therefore, no classes of small entities will be subject to the requirements of the final rule. Finally, no professional skills are necessary for compliance with the final rule other than honesty and integrity.

G. An Explanation of the Reasons for the Determination of the Commission That the Final Rule Will Attain Its Objectives in a Manner Consistent With Applicable Law and the Reasons the Particular Alternative Was Chosen

The Commission's primary objective in commencing this rulemaking was to

expand the remedies available to it in combatting two prevalent categories of impersonation scams most frequently reported by consumers—government impersonators and business impersonators. As explained throughout this SBP, based upon the record, including public comments, the Commission finds the final rule will attain this objective in a manner consistent with applicable law.

The final rule is straightforward and defines with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1). It also avoids novelty by borrowing from existing rules and statutory definitions.[173] At the same time, the final rule is drafted with sufficient flexibility to address the various types of conduct covered by the prohibition on the impersonation of government and businesses. Furthermore, this rulemaking has provided ample transparency and opportunity for public participation in accordance with the underlying statutory requirements of section 18 of the FTC Act, 15 U.S.C. 57a, the Administrative Procedure Act, and Part 1, subpart B of the Commission's Rules of Practice.[174]

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

Endnotes

[1] Fed. Trade Comm'n, Advance Notice of Proposed Rulemaking: Trade Regulation Rule on Impersonation of Government and Businesses, 86 FR 72901 (Dec. 23, 2021), *https://www.federalregister.gov/documents/2021/12/23/2021-27731/trade-regulation-rule-on-impersonation-of-government-and-businesses.*

[2] *See id.* at 72904.

[3] Those included, among others, numerous reports of government impersonation scams reported to federal agencies as reflected in the following public announcements. On March 7, 2022, the Federal Bureau of Investigation issued a Public Service Announcement ''warning the public of ongoing widespread fraud schemes in which scammers impersonate law enforcement or government officials in attempts to extort money or steal personally identifiable information.'' Similarly, on May 20, 2022, multiple federal law enforcement agencies issued a scam alert spearheaded by the Social Security Administration's Office of the Inspector General warning the public of government impersonation scams involving the reproduction of federal law enforcement credentials and badges. On June 3, 2022, the Commission issued a press release noting that in some impersonation scams, fraudsters have instructed consumers to convert cash into cryptocurrency under false threats of government investigations or fraud. *See* Fed. Trade Comm'n, Notice of Proposed Rulemaking: Trade Regulation Rule on Impersonation of Government and Businesses, 87 FR 62741, 62742 (Oct. 17, 2022), *https://www.federalregister.gov/documents/2022/10/17/2022-21289/trade-regulation-rule-onimpersonation-of-government-and-businesses.*

[4] *See id.* at 62741–51.

[5] *See id.* at 62741–42.

[6] *Id.* at 62750.

[7] *See* Fed. Trade Comm'n, Trade Regulation Rule on Impersonation of Government and Businesses, *https://www.regulations.gov/docket/FTC-2022-0064/* comments.

[8] Cindy L. Brown and Raye Mitchell, Cmt. on NPRM at 9 (Dec. 19, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0077* (''Brown Cmt.''); William MacLeod, Cmt. on NPRM at 2 (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0078* (''MacLeod Cmt.'').

[9] Fed. Trade Comm'n, Initial Notice of Informal Hearing: Trade Regulation Rule on Impersonation of Government and Businesses, 88 FR 19024 (Mar. 30, 2023), *https://www.federalregister.gov/documents/2023/03/30/2023-06537/trade-regulation-rule-on-impersonation-of-government-and-businesses.* This Initial Notice of Informal Hearing also served as the Final Notice of Informal Hearing. The Commission determined William MacLeod's comment in response to the NPRM represented an ''adequate request'' for such an informal hearing. The comment from Cindy Brown explicitly requesting to make a presentation at an informal hearing also represented an ''adequate request'' triggering the Commission's obligation to hold an informal hearing but was inadvertently omitted from inclusion in the Initial Notice of Informal Hearing.

[10] Because this informal hearing was the first held in several decades, the Commission allowed interested parties to request the opportunity to make an oral comment in response to the Notice of Informal Hearing as well as the NPRM. However, the Commission noted that in the future it may limit oral statements to those who requested to make an oral statement in response to the NPRM, as provided for in the Rules of Practice. *Id.* at 19025 n.24.

[11] Although Cindy Brown did not submit a request to make an oral statement in response to the Notice of Hearing, she was permitted to make an oral statement at the hearing based upon her prior comment in response to the NPRM in which she explicitly stated her interest ''in making a presentation at an informal hearing.''

[12] The Notice of Informal Public Hearing comments addressing specific provisions of the rule or questions in the NPRM soliciting public comment are discussed in Section III within the substantive discussions on the relevant provisions.

[13] 5 U.S.C. 551 *et seq.;* 16 CFR 1.7–1.20.

[14] Rules of Practice, 16 CFR 1.14(a)(1)(i)–(iii). In addition, in accordance with 16 CFR 1.14(a)(2), the regulatory analysis is provided in Section VI of this SBP.

[15] ANPR, 86 FR at 72901; *see* also Fed. Trade Comm'n, Explore Government Imposter Scams, TABLEAU PUBLIC, *https://public.tableau.com/app/profile/federal.trade.commission/viz/GovernmentImposter/Infographic.*

[16] NPRM, 87 FR at 62742.

[17] *Id.* at 62742–46.

[18] *In re Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 174 (1984); *see also In re POM Wonderful LLC,* No. 9344, 2013 WL 268926, at *18 (Jan. 16, 2013).

[19] ANPR, 86 FR at 72901.

[20] NPRM, 87 FR at 62746–47.

[21] ANPR, 86 FR at 72903–04; *see also* NPRM, 87 FR at 62748–49.

[22] *See* AMG Cap. Mgmt., LLC v. FTC, 141 S. Ct. 1341, 1352 (2021).

[23] *See* 15 U.S.C. 57b(a) and (b); *see also* NPRM, 87 FR at 62746 (discussing AMG Cap. Mgmt.).

[24] The Commission can recover money for consumers directly through a federal court action or obtain civil penalties directly from a federal court when the Rule has been violated. Without the Rule, the path to monetary relief is longer, and requires the Commission to first issue a final cease-and-desist order—which might not become final until after the resolution of any resulting appeal. Then, to recover money for consumers, the Commission must prove that the violator engaged in fraudulent or dishonest conduct in a second action in federal court. *See* 15 U.S.C. 57b(a) and (b).

[25] *See* section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A) (providing that violators of a trade regulation rule ''with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule'' are liable for civil penalties for each violation). In addition, any entity or person who violates such a rule (irrespective of the state of knowledge) is liable for injury caused to consumers by the rule violation. The Commission may pursue such recovery in a suit for consumer redress under section 19 of the FTC Act, 15 U.S.C. 57b.

[26] NPRM, 87 FR at 62749.

[27] *Id.*

[28] *https://www.regulations.gov/document/FTC-2021-0077-0001/comment.*

[29] *https://www.regulations.gov/docket/FTC-2023-0030/comments.*

[30] NPRM, 87 FR at 62750.

[31] *Id.*

[32] *Id.,* Question 3 (Does the proposed rule contain a collection of information?) and Question 4 (Would the proposed rule, if promulgated, have a significant economic impact on a substantial number of small entities? If so, how could it be modified to avoid a significant economic impact on a substantial number of small entities?)

[33] NPRM, 87 FR at 62750.

[34] *See, e.g.,* Anonymous, Cmt. on NPRM (Nov. 3, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0011* (describing impersonation of accounts payable in medical device industry); Bernadette Padilla, Cmt. on NPRM (Nov. 8, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0014* (describing police impersonation scam involving stolen PII); Anonymous Meeting Planner, Cmt. on NPRM (Dec. 6,

2022), *https://www.regulations.gov/comment/FTC-2022-0064-0030* (describing attendee list and hotel reservation impersonation scams); California IT in Education, Cmt. on NPRM (Nov. 9, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0034* (describing attendee list impersonation scam); Illinois Landscape Contractors Association, Cmt. on NPRM (Dec. 12, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0038* (describing attendee list and hotel reservation impersonation scams).

[35] *See e.g.,* Salina Maddox, Cmt. on NPRM (Oct. 22, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0003* (spam calls); Tatiana Alvarez, Cmt. on NPRM (Nov. 22, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0008* (Romanian mob scam); Tinee Carraker, Cmt. on NPRM (Nov. 4, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0012* (foreclosure scam); Susan Rounsley, Cmt. on NPRM (Nov. 6, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0013* (violations of Do Not Call requirements).

[36] *See, e.g.,* Suhkvir Singh/Rutgers Law School Students, Cmt. on NPRM (Nov. 22, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0019* (''Rutgers Law Students/Singh Cmt.''); AIM, the European Brands Association, Cmt. on NPRM (Dec. 13, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0041* (''AIM Cmt.''); The Messaging Malware Mobile Anti-Abuse Working Group, Cmt. on NPRM (Dec. 15, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0051* (''M3AAWG Cmt.''); The International Trademark Association, Cmt. on NPRM (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0054* (''INTA Cmt.''); Electronic Privacy Information Center, National Consumer Law Center, National Consumers League, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, and U.S. PIRG, Cmt. on NPRM (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0070* (''EPIC Cmt.''); Recording Industry Association of America, Cmt. on NPRM (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0064* (''RIAA Cmt.'').

[37] United States Patent and Trademark Office, Cmt. on NPRM at 2–3 (Dec. 2, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0026* (''USPTO Cmt.''); INTA Cmt. on NPRM; United States Copyright Office, Cmt. on NPRM (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0067* (''USCO Cmt.''); The Toy Association, Inc., Cmt. on NPRM at 2 (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0069* (''Toy Cmt.''); Cellular Telecommunications and Internet Association, Cmt. on NPRM (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0066* (''CTIA Cmt.''); Marine Retailers Association of the Americas, National Marine Manufacturers Association, National RV Dealers Association, Cmt. on NPRM (Dec. 19, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0076* (''MRAA Cmt.'').

[38] *See, e.g.,* USPTO Cmt. on NPRM at 2–3; USCO Cmt. on NPRM at 2; Toy Cmt. on NPRM at 2; CTIA Cmt. on NPRM at 3; MRAA Cmt. on NPRM at 4. *See also supra,* note 25.

[39] USPTO Cmt. on NPRM at 2–3.

[40] MRAA Cmt. on NPRM at 4.

[41] USCO Cmt. on NPRM at 2–3.

[42] *Id.;* USPTO Cmt. on NPRM at 2.

[43] CTIA Cmt. on NPRM at 5, 7.

[44] Somos, Inc., Cmt. on NPRM at 2–3 (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0068* (''Somos Cmt.'').

[45] In explaining the scope of the proposed rule, the NPRM provided an illustrative, but non-exhaustive, list of unlawful conduct that would be covered by the prohibitions against impersonating government and businesses. NPRM, 87 FR at 62746–47. That list merely provides examples as it would be impracticable to list all possible violative conduct.

[46] 16 CFR 310.4(a)(8).

[47] USTelecom Cmt. on NPRM at 2; M3AAWG Cmt. on NPRM at 3–4; RIAA Cmt. on NPRM at 3; Anti-Phishing Working Group, Cmt. on NPRM at 1–2 (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0073* (''APWG Cmt.''), *https://www.regulations.gov/comment/FTC-2022-0064-0073* (''APWG Cmt.''); Coalition for Online Accountability, Cmt. on NPRM at 1–3 (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0074* (''COA Cmt.''); INTA Cmt. on NPRM at 8–10; Coalition for a Secure & Transparent Internet, Cmt. on NPRM at 1 (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0065* (''CSTI Cmt.'').

[48] *Id.*

[49] M3AAWG Cmt. on NPRM at 3–4; RIAA Cmt. on NPRM at 3–4; AIM Cmt. on NPRM at 1; COA Cmt. on NPRM at 1–3; INTA Cmt. on NPRM at 8–10.

[50] COA Cmt. on NPRM at 2.

[51] M3AAWG Cmt. on NPRM at 3–4; APWG Cmt. on NPRM at 1–2; *see also* APWG, Cmt. on Informal Hearing at 1–2 (Apr. 14, 2023), *https://www.regulations.gov/comment/FTC-2023-0030-0027* (''APWG IH Cmt.'').

[52] *See* NPRM, 87 FR at 62746–47. The example of voice cloning—a relatively new technology—emphasizes the need for an illustrative, but non-exhaustive, list of unlawful conduct. Audio deepfakes, including voice cloning, are generated, edited, or synthesized by artificial intelligence, or ''AI,'' to create fake audio that seems real. *See* Khanjani, et. al., How Deep are the Fakes? Focusing on Audio Deepfake: A Survey, available at *https://arxiv.org/ftp/arxiv/papers/2111/2111.14203.pdf.*

[53] Americans for Prosperity Foundation, Cmt. on NPRM at 1–2 (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0062* (''AFPF Cmt.'').

[54] *Id.* at 1.

[55] Public Law 93–637, 88 Stat. 2183 (1975).

[56] ANPR, 86 FR at 72904.

[57] *Id.*

[58] NPRM, 87 FR at 62750, Question 2.

[59] USPTO Cmt. on NPRM at 3–9; M3AAWG Cmt. on NPRM at 6–9; INTA Cmt. on NPRM at 3–5; Toy Cmt. on NPRM at 3–5; USCO Cmt. on NPRM at 3–7; MRAA Cmt. on NPRM at 2–4.

[60] USPTO Cmt. on NPRM at 3–9; M3AAWG Cmt. on NPRM at 6–9; INTA Cmt. on NPRM at 3–5; Toy Cmt. on NPRM at 3–5; USCO Cmt. on NPRM at 3–7; MRAA Cmt. on NPRM at 2–4.

[61] Toy Cmt. on NPRM at 3–5.

[62] USPTO Cmt. on NPRM at 3–9; USCO Cmt. on NPRM at 3–4;

[63] INTA Cmt. on NPRM at 3; M3AAWG Cmt. on NPRM at 7.

[64] M3AAWG Cmt. on NPRM at 9.

[65] *Id.*

[66] *Id.*

[67] NPRM, 87 FR at 62750, Question 5.

[68] USCO Cmt. on NPRM at 8; USPTO Cmt. on NPRM at 10; INTA Cmt. on NPRM at 6–7; M3AAWG Cmt. on NPRM at 9; MacLeod Cmt. on NPRM at 1–2; AFPF Cmt. on NPRM at 3–6.

[69] NetChoice Cmt. on NPRM at 2; Toy Cmt. on NPRM at 2; ZoomInfo Technologies LLC, Cmt. on NPRM at 1–2 (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0079* (''Zoom NPRM Cmt.'').

[70] USCO Cmt. on NPRM at 8; USPTO Cmt. on NPRM at 10.

[71] USCO Cmt. on NPRM at 8.

[72] USPTO Cmt. on NPRM at 10.

[73] *Id.* at 9–10.

[74] MacLeod Cmt. on NPRM at 2; AFPF Cmt. on NPRM at 3; M3AAWG Cmt. on NPRM at 9.

[75] M3AAWG Cmt. on NPRM at 2; NetChoice Cmt. on NPRM at 2; Toy Cmt. on NPRM at 2; AFPF Cmt. on NPRM at 2, 4; Zoom Cmt. on NPRM at 1; INTA Cmt. on NPRM at 5–6; William MacLeod, Cmt. on Informal Hearing at 5–7 (Apr. 14, 2023), *https://www.regulations.gov/comment/FTC-2023-0030-0019* (''MacLeod IH Cmt.'').

[76] AFPF Cmt. on NPRM at 2, 4; *see also* MacLeod IH Cmt. at 2.

[77] AFPF Cmt. on NPRM at 3, 4. M3AAWG Cmt. on NPRM at 2; NetChoice Cmt. on NPRM at 2; INTA Cmt. on NPRM at 5–6; Toy Cmt. on NPRM at 2; Zoom Cmt. on NPRM at 1; MacLeod IH Cmt. at 5–7.

[78] AFPF Cmt. on NPRM at 2, 6.

[79] NetChoice Cmt. on NPRM at 2; M3AAWG Cmt. on NPRM at 3.

[80] AFPF Cmt. on NPRM at 4; INTA Cmt. on NPRM at 5–6; Toy Cmt. on NPRM at 2; Zoom Cmt. on NPRM at 1; MacLeod IH Cmt. at 5.

[81] MacLeod IH Cmt. at 1; *see also* MacLeod Cmt. on NPRM at 1.

[82] MacLeod IH Cmt. at 2.

[83] *Id.* at 3.

[84] *Id.* at 3.

[85] AFPF Cmt. on NPRM at 3–4.

[86] *Id.* at 3, 5–6.

[87] M3AAWG Cmt. on NPRM at 9.

[88] *Id.* at 1, 5.

[89] AFPF Cmt. on NPRM at 5.

[90] *See* 15 U.S.C. 45(m)(1)(A).

[91] *See Cent. Hudson Gas & Elec. Corp.* v. *Pub. Serv. Comm'n of N.Y.,* 447 U.S. 557, 563–64 (1980) (''[T]here can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity. The government may ban forms of communication more likely to deceive the public than to inform it, or commercial speech related to illegal activity.'') (citations omitted); *see also Zauderer* v. *Office of Disciplinary Counsel,* 471 U.S. 626, 638 (1985) (holding it is ''well settled'' that ''[t]he States and the Federal Government are free

to prevent the dissemination of commercial speech that is false, deceptive, or misleading'').

[92] USPTO Cmt. on NPRM; Anonymous, Cmt. on NPRM (Dec. 9, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0033* (''0033 Cmt.''); AIM Cmt. on NPRM; Erik M. Pelton & Associates, PLLC, Cmt. on NPRM (Dec. 14, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0045;* NetChoice Cmt. on NPRM; M3AAWG Cmt. on NPRM; Consumer Technology Association, Cmt. on NPRM (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0073* (''CTA Cmt.''); NCTA—The internet and Television Association, Cmt. on NPRM (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0071* (''NCTA Cmt.''); ASAE Cmt. on NPRM; INTA Cmt. on NPRM; Somos Cmt. on NPRM; CTIA Cmt. on NPRM; USCO Cmt. on NPRM; USTelecom Cmt. on NPRM; American Society of Association Executives, Center for Exhibition Industry Research Destinations International, Exhibition Services & Contractors Association, Exhibitions & Conferences Alliance, Experiential Designers + Producers Association, International Association of Exhibitions & Events, International Association of Venue Managers, PCMA, Society of Independent Show Organizers, UFI, Cmt. on NPRM (Dec 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0060* (''ECA Cmt.''); RIAA Cmt. on NPRM; American Bar Association Section of Intellectual Property Law, Cmt. on NPRM at 3 (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0061* (''ABA–IPL Cmt.''); AFPF Cmt. on NPRM; Zoom Cmt. on NPRM; American Bankers Association, ACA International, American Association of Healthcare Administrative Management, Credit Union National Association, Mortgage Bankers Association National Association of Federally-Insured Credit Unions (the Associations), Cmt. on NPRM (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0080* (''Assocns. Cmt.''); COA Cmt. on NPRM; MacLeod Cmt. on NPRM; Brown Cmt. on NPRM.

[93] A copy of the transcript of the May 4, 2023 Informal Hearing is available at *https://www.ftc.gov/system/files/ftc_gov/pdf/impersonationruleinformalhearingtranscript.pdf.* References to the transcript from the May 4, 2023 Informal Hearing are cited herein as: Name of commenter, May 2023 Tr at page no. (*e.g.,* Doe, May 2023 Tr at #); *see* CTA, May 2023 Tr at 16; MacLeod, May 2023 Tr at 27; USTelecom, May 2023 Tr at 30; Chilson, May 2023 Tr at 34; VON, May 2023 Tr at 36; American Bankers Association (ABA), May 2023 Tr at 39–40; INCOMPAS, May 2023 Tr at 42, 44; NCTA, May 2023 Tr at 51–52.

[94] USPTO Cmt. on NPRM at 10; USCO Cmt. on NPRM at 8; RIAA Cmt. on NPRM at 3; ABA, May 2023 Tr at 39–40.

[95] USPTO Cmt. on NPRM at 10; USCO Cmt. on NPRM at 8; RIAA Cmt. on NPRM at 3; ABA, May 2023 Tr at 39–40.

[96] AFPF Cmt. on NPRM at 3–5; MacLeod IH Cmt. at 6–7; McLeod, May 2023 Tr at 27.

[97] 0033 Cmt. on NPRM; ABA–IPL Cmt. on NPRM at 2; Zoom Cmt. on NPRM at 1.

[98] ABA–IPL Cmt. on NPRM at 1–2; NetChoice Cmt. on NPRM at 2; USTelecom Cmt. on NPRM at 2; *see also* CTA, May 2023 Tr at 16; VON, May 2023 Tr at 36; ABA, May 2023 Tr at 39–40; INCOMPAS, May 2023 Tr at 42.

[99] NetChoice Cmt. on NPRM at 2; CTA Cmt. on NPRM; American Society of Association Executives, Cmt. on NPRM at 1 (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0057* (''ASAE Cmt.''); INTA Cmt. on NPRM; Somos Cmt. on NPRM; CTIA Cmt. on NPRM at 7; USTelecom Cmt. on NPRM at 2; ECA Cmt. on NPRM at 3; ABA–IPL Cmt. on NPRM at 3; Zoom Cmt. on NPRM at 2; Cmt. on NPRM at 3; *see also* CTA, May 2023 Tr at 16; MacLeod, May 2023 Tr at 27; USTelecom, May 2023 Tr at 30; Chilson, May 2023 Tr at 34; VON, May 2023 Tr at 36; INCOMPAS, May 2023 Tr at 42, 44; NCTA, May 2023 Tr at 51–52.

[100] CTA Cmt. on NPRM at 7.

[101] USTelecom Cmt. on NPRM at 2.

[102] ABA–IPL Cmt. on NPRM at 3.

[103] NCTA Cmt. on NPRM at 2.

[104] M3AAWG Cmt. on NPRM at 10.

[105] Brown Cmt. on NPRM at 8.

[106] M3AAWG Cmt. on NPRM at 3.

[107] COA Cmt. on NPRM at 3; M3AAWG Cmt. on NPRM at 4–5. ''WHOIS data'' is a commonly used internet record listing that identifies who owns a domain and how to get in contact with them.

[108] *See, e.g.,* Compl. at 3–5 & Ex. H, *FTC* v. *Moore,* No. 5:18–cv–01960 (C.D. Cal. filed Sept. 13, 2018) (alleging that a seller of variety of fake but genuine-looking financial documents provided to others the means and instrumentalities with which to make misrepresentations regarding a person's identity).

[109] NPRM, 87 FR at 62746.

[110] *Id.* at 62751; *see also* 15 U.S.C. 44.

[111] NPRM, 87 FR at 62747.

[112] *Id.* at 62750.

[113] Minnesota Nursery & Landscape Association, Cmt. on NPRM at 2 (Dec. 2, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0027;* Louise Nemmers, Cmt. on NPRM (Dec. 5, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0028;* California Landscape Contractors Association, Cmt. on NPRM (Dec. 6, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0029;* Outdoor Power Equipment Institute, Cmt. on NPRM at 2 (Dec. 7, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0032;* AIM Cmt. on NPRM at 2; AARP, Cmt. on NPRM (Dec. 14, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0043* (''AARP Cmt.''); Minnesota Municipal Utilities Association, Cmt. on NPRM (Dec. 14, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0048;* M3AAWG Cmt. on NPRM at 10; CTA Cmt. on NPRM; ASAE Cmt. on NPRM; INTA Cmt. on NPRM; Toy Cmt. on NPRM at 6; RIAA Cmt. on NPRM at 2; National Association of Broadcasters, Cmt. on NPRM (Dec. 19, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0075;* MRAA Cmt. on NPRM at 4.

[114] *See, e.g.,* Toy Cmt. on NPRM at 6; MRAA Cmt. on NPRM at 4; AARP Cmt. at 2; CTA Cmt. on NPRM at 1; ASAE Cmt. on NPRM; RIAA Cmt. on NPRM at 1; INTA Cmt. on NPRM at 2.

[115] AIM Cmt. on NPRM at 2; M3AAWG Cmt. on NPRM at 10; CTA Cmt. on NPRM at 1.

[116] Toy Cmt. on NPRM at 6; INTA Cmt. on NPRM at 6.

[117] Toy Cmt. on NPRM at 6; RIAA Cmt. on NPRM at 3.

[118] INTA Cmt. on NPRM at 6; Toy Cmt. on NPRM at 6.

[119] NPRM, 87 FR at 62750.

[120] Rutgers Law Students/Singh Cmt. on NPRM; AIM Cmt. on NPRM; AARP Cmt. on NPRM; NCTA Cmt. on NPRM; EPIC Cmt. on NPRM; RIAA Cmt. on NPRM.

[121] AIM Cmt. on NPRM at 2; Rutgers Law Students/Singh Cmt. on NPRM at 1.

[122] Rutgers Law Students/Singh Cmt. on NPRM at 1–2; AARP Cmt. on NPRM at 2; EPIC Cmt. on NPRM at 5.

[123] Rutgers Law Students/Singh Cmt. on NPRM at 1–2.

[124] Rutgers Law Students/Singh Cmt. on NPRM at 2–4; AARP Cmt. on NPRM at 1–2; EPIC Cmt. on NPRM at 4–5.

[125] AARP Cmt. on NPRM at 2.

[126] EPIC Cmt. on NPRM at 5.

[127] NCTA Cmt. on NPRM at 3, 8.

[128] *Id.*

[129] RIAA Cmt. on NPRM at 3.

[130] *Id.* at 2.

[131] Rutgers Law Students/Singh Cmt. on NPRM at 2.

[132] *Id.*

[133] *Id.* at 3.

[134] *Id.*

[135] *Id.* at 3–4.

[136] *Id.;* NCTA Cmt. on NPRM at 8, n. 16.

[137] The Commission also is exploring other tools to address the fake endorsement concerns raised by the RIAA and Rutgers Law School Students. Specifically, in the Commission's proposed Rule on the Use of Consumer Reviews and Testimonials, § 465.2 would prohibit businesses from purchasing a consumer review, or from disseminating or causing the dissemination of a consumer testimonial or celebrity testimonial when the business knew or should have known it was false or fake. *See* Fed. Trade Comm'n, Notice of Proposed Rulemaking: Trade Regulation Rule on the Use of Consumer Reviews and Testimonials, 88 FR 49364, 49391 (Jul. 31, 2023), *https://www.federalregister.gov/documents/2023/07/31/2023-15581/trade-regulation-rule-on-the-use-of-consumer-reviews-and-testimonials#sectno-reference-465.2.*

[138] USTelecom Cmt. on NPRM at 2; M3AAWG Cmt. on NPRM at 3–4; RIAA Cmt. on NPRM at 3; APWG Cmt. on NPRM; COA Cmt. on NPRM at 1–3; INTA Cmt. on NPRM at 8–10; CSTI Cmt. on NPRM at 1.

[139] *Id.*

[140] M3AAWG Cmt. on NPRM at 3–4; RIAA Cmt. on NPRM at 3–4; AIM Cmt. on NPRM at 1; COA Cmt. on NPRM at 1–3; INTA Cmt. on NPRM at 8–10.

[141] COA Cmt. on NPRM at 2.

[142] M3AAWG Cmt. on NPRM at 3–4; APWG Cmt. on NPRM at 1–2; *see also* APWG, Cmt. on Informal Hearing at 1–2 (Apr. 14, 2023), *https://www.regulations.gov/comment/FTC-2023-0030-0027* (''APWG IH Cmt.'').

[143] *See also supra,* note 52.

[144] Toy Cmt. on NPRM at 2; M3AAWG Cmt. on NPRM at 2; ABA–IPL Cmt. on NPRM at 3; INTA Cmt. on NPRM at 2.

[145] ABA–IPL Cmt. on NPRM at 3.

[146] Toy Cmt. on NPRM at 2; M3AAWG Cmt. on NPRM at 2; INTA Cmt. on NPRM at 2.

[147] INTA Cmt. on NPRM at 6–7.

[148] NPRM, 87 FR at 62750.

[149] *See* 15 U.S.C. 57b–3(b)(2).

[150] 15 U.S.C. 57b–3(b)(2)(A).

[151] *See* 5 U.S.C. 603–605; *see also* section 22(b) of the FTC Act, 15 U.S.C. 57b–3(b).

[152] NPRM, 87 FR at 62749–50; *see also* 5 U.S.C. 603.

[153] NPRM, 87 FR at 62750.

[154] NPRM, 87 FR at 62749.

[155] *See* 15 U.S.C. 57b–3(b)(3)(A)(ii) (''In order to avoid duplication or waste, the Commission is authorized to . . . whenever appropriate, incorporate any data or analysis contained in a regulatory analysis issued under this subsection in the statement of basis and purpose.'').

[156] NPRM, 87 FR at 62749–50.

[157] *See* ANPR, 86 FR at 72901 & n.24 (discussing AMG Cap. Mgmt.); NPRM, 87 FR at 62746 (same).

[158] *See* ANPR, 86 FR at 72901 & n.24; NPRM, 87 FR at 62746; *see also* 15 U.S.C. 57b(a) and (b).

[159] *See* 15 U.S.C. 45(m)(1)(A).

[160] NPRM, 87 FR at 62750.

[161] Only one commenter suggested an alternative to regulation, which the Commission declines to adopt for the reasons previously stated in Section III.B.

[162] *See supra* note 161.

[163] Toy Cmt. on NPRM at 5–6; MRAA Cmt. on NPRM at 4.

[164] Robert Kamerschen, Cmt. on NPRM at 2 (Nov. 30, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0023.*

[165] *See* NPRM, 87 FR at 62750.

[166] NPRM, 87 FR at 62748.

[167] *Id.*

[168] *See* Fed. Trade Comm'n, Explore Government Imposter Scams, TABLEAU PUBLIC, *https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/SubcategoriesOverTime* (last visited December 21, 2023).

[169] *Id.*

[170] *See* 15 U.S.C. Secs. 45(m)(1)(A) and 57b.

[171] *See* Toy Cmt. on NPRM at 5–6; MRAA Cmt. on NPRM at 4; *see also* NPRM, 87 FR at 62749.

[172] NPRM, 87 FR at 62750.

[173] *See, e.g.,* TSR, 16 CFR 310.3(a)(2)(vii); R-Value Rule, 16 CFR 460.21; Regulation O (Mortgage Assistance Relief Services), 12 CFR 1015.3(b)(3).

[174] 5 U.S.C. 551 *et seq.;* 16 CFR 1.7 through 1.20.

List of Subjects in 16 CFR Part 461

Consumer protection, Impersonation, Trade Practices.

■ For the reasons set forth above, the Federal Trade Commission amends 16 CFR Chapter I by adding part 461 to read as follows:

PART 461—RULE ON IMPERSONATION OF GOVERNMENT AND BUSINESSES

Sec.

Authority: 15 U.S.C. 41 through 58.

§ 461.1 Definitions.

As used in this part:

Business means a corporation, partnership, association, or any other entity that provides goods or services, including not-for-profit entities.

Government includes federal, state, local, and tribal governments as well as agencies and departments thereof.

Materially means likely to affect a person's choice of, or conduct regarding, goods or services.

Officer includes executives, officials, employees, and agents.

§ 461.2 Impersonation of Government Prohibited.

It is a violation of this part, and an unfair or deceptive act or practice to:

(a) materially and falsely pose as, directly or by implication, a government entity or officer thereof, in or affecting commerce as *commerce* is defined in the Federal Trade Commission Act (15 U.S.C. 44); or

(b) materially misrepresent, directly or by implication, affiliation with, including endorsement or sponsorship by, a government entity or officer thereof, in or affecting commerce as *commerce* is defined in the Federal Trade Commission Act (15 U.S.C. 44).

§ 461.3 Impersonation of Businesses Prohibited.

It is a violation of this part, and an unfair or deceptive act or practice to:

(a) materially and falsely pose as, directly or by implication, a business or officer thereof, in or affecting commerce as commerce is defined in the Federal Trade Commission Act (15 U.S.C. 44); or

(b) materially misrepresent, directly or by implication, affiliation with, including endorsement or sponsorship by, a business or officer thereof, in or affecting commerce as commerce is defined in the Federal Trade Commission Act (15 U.S.C. 44).

By direction of the Commission.

April J. Tabor,

Secretary.

Note: The following statement will not appear in the Code of Federal Regulations.

Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya

Today the Federal Trade Commission finalizes its rule prohibiting government and business impersonation schemes and issues a supplemental notice of proposed rulemaking to extend this prohibition to impersonation of individuals. This final rule marks the first time since 1980 that the Commission has finalized a brand-new trade regulation rule prohibiting an unfair or deceptive practice.

Impersonation schemes cheat Americans out of billions of dollars every year. Fraudsters pretending to represent government agencies—like the Social Security Administration or the IRS—tell targets that if they do not hand over money or their sensitive personal information, then they could lose a government benefit, face a tax liability, or even be arrested. Scammers also commonly claim false affiliations with household brand names to bilk consumers for bogus services. This category of fraud skyrocketed during the coronavirus pandemic—with imposters scamming Americans out of reported $2 billion between October 2020 and September 2021, an 85 percent increase year-over-year.[1] Losses remain high: FTC data show that in 2023 consumers reported losing $2.7 billion to reported imposter scams.[2] Impersonation fraud has remained one of the largest sources of total reported consumer financial losses for several years.[3]

Public comments submitted to the Commission provide a snapshot of how impersonation frauds can devastate:

• One commenter reported on how a friend was scammed by someone claiming that they were with Publisher's Clearing House and that she had won a sweepstakes. Her friend was scammed out of a total of $367,000: ''She used all of her savings . . . to help her grandchildren go to college and wiped out her IRA and now is left to pay the

[1] Fed. Trade Comm'n, Fraud Reports: Trends Over Time (2021), *https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/FraudFacts.*

[2] Fed. Trade Comm'n, Consumer Sentinel Network Data Book 2023 (2024), *https://www.ftc.gov/reports/consumer-sentinel-network-data-book-2023.*

[3] Fed. Trade Comm'n, *Fraud Reports: Top Reports, Tableau Public* (last accessed Feb. 8, 2024), *https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/TopReports; see also* Fed. Trade Comm'n, Consumer Sentinel Network Data Book 2020 (2021) at 4–8, *https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-databook-2020/csn_annual_data_book_2020.pdf; see also,* Consumer Sentinel Network Data Book 2023, *supra* note 2.

penalties for depleting it. This woman is now, at age 70, in a position of living only on her social security and has to try to find work. . . .''[4]

• Another commenter received a call from someone claiming to be with the U.S. Treasury Department, who asserted that her social security number had been compromised. This person lost all her money: ''That money is from my mother's life insurance policy who passed in 2019. My father needs that money to survive. I am devastated.''[5]

• A third commenter spoke of her mother being scammed by someone pretending to be with a government agency: ''Before we, her family, realized the extent to which the imposters preyed upon her, she had divulged identity and banking information.''[6]

The rise of generative AI technologies risks making these problems worse by turbocharging scammers' ability to defraud the public in new, more personalized ways. For example, the proliferation of AI chatbots gives scammers the ability to generate spear-phishing emails using individuals' social media posts and to instruct bots to use words and phrases targeted at specific groups and communities.[7] AI-enabled voice cloning fraud is also on the rise, where scammers use voice-cloning tools to impersonate the voice of a loved one seeking money in distress or a celebrity peddling fake goods.[8] Scammers can use these technologies to disseminate fraud more cheaply, more precisely, and on a much wider scale than ever before.

In its supplemental NPRM, the Commission proposes to expand the rule's prohibitions to also cover impersonation of individuals. If adopted, this additional protection will equip enforcers to seek civil penalties and redress when fraudsters impersonate individual people, not just government or business entities. Given the proliferation of AI-enabled fraud, this additional protection seems especially critical. Notably, the supplemental proposal also recommends extending liability to any actor that provides the ''means and instrumentalities'' to commit an impersonation scam. Under this approach, liability would apply, for example, to a developer who knew or should have known that their AI software tool designed to generate deepfakes of IRS officials would be used by scammers to deceive people about whether they paid their taxes. Ensuring that the upstream actors best positioned to halt unlawful use of their tools are not shielded from liability will help align responsibility with capability and control.

By unlocking civil penalties and redress, the final rule, along with the proposed supplemental provisions, will promote both more efficient enforcement and greater deterrence. In 2020, the Supreme Court held that the Commission cannot rely on Section 13(b) of the FTC Act to get money back to defrauded consumers,[9] so rulemakings—while not a substitute for a legislative fix—can help ensure that lawbreakers do not profit from their lawbreaking and that wronged consumers can be made whole.

This rule marks the agency's first brand-new Section 18 rulemaking since 1980. Although the authority to issue rules is clearly laid out in the FTC Act, bureaucratic red tape presented an obstacle to the agency's exercise of this important statutory authority. Thanks to efforts initiated under Commissioner Slaughter's leadership to align the procedural requirements for Section 18 rulemaking with the FTC Act's statutory text, Section 18 rulemakings can now proceed more efficiently.[10] This effort took two years from proposal to final rule, finally putting lie to the old idea that this must be an impossibly long process.

Many thanks to the FTC team for their swift work and dedication. This rule banning government and business impersonation will allow us to more vigorously and effectively protect Americans from fraudsters. And we are eager for public input on the supplemental NPRM that would extend this rule to cover impersonation of individuals. With the rapid rise of voice cloning fraud and other AI-based scams, additional protection for consumers seems especially critical. As these technologies enable more sophisticated and innovative forms of fraud, we will continue to ensure the Commission is activating all the tools Congress has given us and faithfully executing on our statutory mandate.

[FR Doc. 2024–04335 Filed 2–29–24; 8:45 am]

BILLING CODE 6750–01–P

[4] Comment Submitted by Anonymous, FTC Seek Comments on Advanced Notice of Proposed Rule; Impersonation ANPR, *Regulations.gov* (Feb. 22, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0131.*

[5] Comment Submitted by Jamila Sherman, FTC Seek Comments on Advanced Notice of Proposed Rule; Impersonation ANPR, *Regulations.gov* (Feb. 22, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0127.*

[6] Comment Submitted by Susan Frost, FTC Seek Comments on Advanced Notice of Proposed Rule; Impersonation ANPR, *Regulations.gov* (Feb. 16, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0031.*

[7] Bob Violino, *AI Tools Such As ChatGPT Are Generating A Mammoth Increase In Malicious Phishing Emails,* CNBC (Nov. 28, 2023), *https://www.cnbc.com/2023/11/28/ai-like-chatgpt-is-creating-huge-increase-in-malicious-phishing-email.html.*

[8] Eric Revell, *AI Voice Cloning Scams On The Rise, Expert Warns,* Fox Business (Sept. 23, 2023), *https://www.foxbusiness.com/technology/ai-voice-cloning-scams-on-rise-expert-warns.*

[9] *AMG Cap. Mgmt., LLC* v. *FTC,* 593 U.S. (2021).

[10] Press Release, Fed. Trade Comm'n, FTC Votes to Update Rulemaking Procedures, Sets Stage for Stronger Deterrence of Corporate Misconduct (July 1, 2021), *https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-votes-update-rulemaking-procedures-sets-stage-stronger-deterrence-corporate-misconduct.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2022–0279; FRL–10675–02–R6]

Air Plan Approval; Oklahoma; Updates to the State Implementation Plan Incorporation by Reference Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the Oklahoma State Implementation Plan (SIP) submitted by the State of Oklahoma designee on December 17, 2021, and January 20, 2023. This action addresses the submittal of revisions to the Oklahoma SIP to update the incorporation by reference provision of Federal requirements under Oklahoma Administrative Code (OAC).

DATES: This rule is effective April 1, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2022–0279. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Adina Wiley, EPA Region 6 Office, Air Permits Section, 214–665–2115, *wiley.adina@epa.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our March 6, 2023, proposal (88 FR 13755). In that document we proposed to approve revisions to the Oklahoma SIP that update the incorporation by reference dates for Federal requirements. We received one comment on our proposed action, addressed below.

II. Response to Comments

The commentor asserts that there is a potential inconsistency with the portions of our proposed rulemaking discussing the Impact on Areas of Indian Country and Environmental Justice Considerations. We address the comment below in two parts.

Comment: In section III of our proposal (''Impact on Areas of Indian Country'') we said, ''As requested by Oklahoma, the EPA's approval under SAFETEA [1] does not include Indian country lands, including rights-of-way running through the same, that (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c).'' The commentor cites the definition of ''Indian country'' in Title 18, ''(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.'' The commentor offers their interpretation of this definition, stating that ''this statute states that all Indian reservations and areas allocated for the Native American community are reserved for that community and under that community's jurisdiction'' and ties this interpretation to our proposed action, arguing that ''[t]he problem that arises in the proposed statute, is that it leaves the issue of air quality as a responsibility of Indian Country.''

Response: Section III of our proposed rulemaking, Impact on Areas of Indian Country, provides the regulatory history of Oklahoma's request and the EPA's approval to administer the State's environmental regulatory programs in certain areas of Indian Country pursuant to SAFETEA. The EPA's October 1, 2020, approval of the Oklahoma SAFETEA request gives the State—not the Tribes—the authority to administer the Oklahoma SIP within certain areas of Indian country. The State of Oklahoma is responsible for protecting air quality in these areas.

Comment: The commentor states their concern that ''despite Indian Country having authority over their land, they aren't given a sufficient amount of resources to combat poor air quality, leaving them to their own defenses. Subsequently, leaving Tribes to deal with poor air quality and not giving them a chance to improve it. A general recommendation I offer is to (a) add clarity to the cities, and Tribes, that are excluded from Indian Country and will implement this statute, (b) instead of trying to take control of Indian Country or leaving the complete authority to Indian Country, work with the Tribes and create statutes with their opinions and ideas in mind and have a shared statute that everyone benefits from.''

Response: As a result of the EPA's SAFETEA approval, the State of Oklahoma is responsible for protecting air quality in certain areas of Indian Country and concerns about resources allocated to Tribes for this purpose are not relevant to this rulemaking. The EPA notes, however, that several Tribal governments within the State of Oklahoma have Tribal air programs that are supported and encouraged by the EPA.

III. Impact on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt* v *Oklahoma,* 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Public Law 109–59, 119 Stat. 1144, 1937 (August 10, 2005) (''SAFETEA''), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by the EPA for areas outside of Indian country. The State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F.3d 185 (D.C. Cir. 2014).[2]

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country. As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively ''excluded Indian country lands'').

The EPA's approval under SAFETEA expressly provided that to the extent EPA's prior approvals of Oklahoma's environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA's approval of Oklahoma's SAFETEA request.[3] The approval also provided that future revisions or amendments to Oklahoma's approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).

The EPA is approving updates to the Oklahoma SIP incorporation by reference provisions to maintain consistency with Federal requirements, which will apply statewide in Oklahoma. Consistent with the D.C. Circuit's decision in *ODEQ* v. *EPA* and with the EPA's October 1, 2020,

[1] Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Public Law 109–59, 119 Stat. 1144, 1937 (August 10, 2005) (''SAFETEA'')

[2] In *ODEQ* v. *EPA,* the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of Tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA's decision, described in this section, on October 1, 2020.

[3] EPA's prior approvals relating to Oklahoma's SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit's decision in *ODEQ* v. *EPA*) located in the state. *See, e.g.,* 85 FR 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA's approval of Oklahoma's SAFETEA request.

SAFETEA approval, our approval of these SIP revisions will apply to all Indian country within the State of Oklahoma, other than the excluded Indian country lands, as described above. Because—per the State's request under SAFETEA—EPA's October 1, 2020, approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ* v. *EPA,* the SIP will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of Tribal authority.[4]

IV. Final Action

We are approving under section 110 of the CAA, the December 17, 2021, and January 20, 2023, revisions to the Oklahoma SIP to update the incorporation by reference dates for Federal requirements. These revisions were developed in accordance with the CAA and the EPA's regulations, policy, and guidance for SIP development.

The EPA is approving the following revisions to the Oklahoma SIP adopted on June 11, 2021, effective September 15, 2021, and submitted to the EPA on December 17, 2021:

- Revisions to OAC 252:100–2–3, Incorporation by Reference,
- Repeal of OAC 252:100, Appendix Q, and
- Adoption of new OAC 252:100, Appendix Q.

The EPA approves the following revisions to the Oklahoma SIP adopted on June 21, 2022, effective September 15, 2022, and submitted to the EPA on January 30, 2023:

- Revisions to OAC 252:100–2–3, Incorporation by Reference,
- Repeal of OAC 252:100. Appendix Q, and
- Adoption of new OAC 252:100, Appendix Q.

[4] In accordance with Executive Order 13990, EPA is currently reviewing our October 1, 2020 SAFETEA approval and expects to engage in further discussions with Tribal governments and the State of Oklahoma as part of this review. EPA also notes that the October 1, 2020 approval is the subject of a pending challenge in Federal court. (*Pawnee* v *Regan,* No. 20–9635 (10th Cir.)). Pending completion of EPA's review, EPA is proceeding with this proposed action in accordance with the October 1, 2020 approval. EPA's final action on the approved revisions to the Oklahoma SIP that include revisions to OAC 252:100–2–3 and Appendix Q addresses the scope of the state's program with respect to Indian country. Although EPA is approving these revisions before our review of the SAFETEA approval is complete, EPA may make further changes to the approval of Oklahoma's program to reflect the outcome of the SAFETEA review.

V. Environmental Justice Consideration

The EPA reviewed demographic data and provided the results in our March 6, 2023, proposal. See 88 FR 13755, 13756–13757.

VI. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the Oklahoma regulations that update Oklahoma's incorporation by reference of certain Federal regulations in 40 CFR parts 50, 51, and 98 identified and discussed in Section IV of this preamble, Final Action. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (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 in the next update to the SIP compilation.

VII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

The state air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated

goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This final approval of revisions to the Oklahoma SIP that update the incorporation by reference dates for Federal requirements as discussed more fully elsewhere in this document will apply to certain areas of Indian country as discussed in the preamble, and therefore has tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt Tribal law. This action will not impose substantial direct compliance costs on federally recognized Tribal governments because no actions will be required of Tribal governments. This action will also not preempt Tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related Tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA has engaged with Tribal governments that may be affected by this action and provided information about this action.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 22, 2024.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency 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 LL—Oklahoma

■ 2. In § 52.1920, in paragraph (c), the table titled ''EPA Approved Oklahoma Regulations'' is amended by revising the entries for ''252:100–2–3'' and ''252:100, Appendix Q'' to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED OKLAHOMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 100 (OAC 252:100). AIR POLLUTION CONTROL				
*	*	*	*	*
Subchapter 2. Incorporation by Reference				
*	*	*	*	*
252:100–2–3	Incorporation by reference	9/15/2022	3/1/2024, [Insert **Federal Register** citation].	
*	*	*	*	*
Appendices for OAC 252: Chapter 100				
*	*	*	*	*
252:100, Appendix Q	Incorporation by reference	9/15/2022	3/21/2024, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2024–04103 Filed 2–29–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0135; FRL–9538–01–R9]

Air Quality Implementation Plans; California; San Diego County; 2008 and 2015 8-Hour Ozone Nonattainment Area Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of two State implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA) requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS or ''standards'') and the 2015 8-hour ozone NAAQS in the San Diego County ozone nonattainment area (''San Diego County area'' or ''area''). The first SIP revision, ''2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego County'' (''2020 San Diego County Ozone SIP'' or ''2020 Plan''), addresses most of the SIP requirements for the area. The second SIP revision, referred to as the ''Smog Check Certification,'' supplements the motor vehicle inspection and maintenance program portion of the 2020 Plan. The EPA is taking final action to approve the 2020 Plan, and the San Diego County area portion of the Smog Check Certification, as meeting all the applicable ozone nonattainment area requirements for the 2008 and 2015 8-hour ozone NAAQS addressed by the plan except for the emissions statement requirement that the EPA previously found to have been met and the contingency measure requirements, for which the EPA is deferring action.

DATES: This rule is effective April 1, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R09–OAR–2021–0135. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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 through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: John J. Kelly, Air Planning Office (AIR–2–1), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 947–4151; email: *kelly.johnj@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Summary of Proposed Action

On December 19, 2023 (88 FR 87850), the EPA proposed to approve all of the ''2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego County,'' submitted on January 12, 2021, with two exceptions, and the San Diego County area vehicle inspection and maintenance (I/M) SIP revision for the 2008 and 2015 ozone NAAQS, *i.e.,* the San Diego County area portion of the ''California Smog Check Performance Standard Modeling and Program Certification for the 70 Parts Per Billion (ppb) 8-Hour Ozone Standard'' (also referred to as the ''Smog Check Certification''), submitted on April 26, 2023. The portions of the 2020 Plan on which we did not propose action are the portion addressing the emissions statement requirement, which we already approved in a separate rulemaking, and the portion addressing the contingency measures requirement, for which we are deferring action.

Our December 19, 2023 proposed rule contains more information on the plans, our evaluation, and our rationale for proposing approval.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. Environmental Justice Considerations

This document takes final action to approve certain SIP elements included in the 2020 Plan and the San Diego County area portion of the Smog Check Certification. Information on ozone and its relationship to negative health impacts can be found on the EPA's website. We expect that this action will generally be neutral or contribute to reduced environmental and health impacts on all populations in the San Diego County area, including people of color and low-income populations in the area. At a minimum, the action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to attain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people. Lastly, although the San Diego County Air Pollution Control District (''District'') did not perform an environmental justice review specifically for the 2020 Plan, the District does implement the State's ''Community Air Protection Program'' in San Diego County. This environmental justice program identifies specific communities based on environmental, health, and socioeconomic information in order to reduce their pollution exposure.

IV. EPA Action

No comments were submitted. Therefore, pursuant to section 110(k)(3) of the CAA, and for the reasons provided in our December 19, 2023 proposed rule, the EPA is taking final action to approve into the California SIP all of the ''2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego County,'' submitted to the EPA on January 12, 2021, with two exceptions, and the San Diego County area I/M SIP revision for the 2008 and 2015 ozone NAAQS, *i.e.,* the San Diego County area portion of the ''Smog Check Certification,'' submitted on April 26, 2023. More specifically, we are taking final action to approve the following portions of the 2020 Plan, as supplemented by the Smog Check Certification, as meeting the following requirements:

- Base year emissions inventory element as meeting the requirements of CAA sections 172(c)(3) and 182(a)(1) for the 2008 and 2015 ozone NAAQS, 40 CFR 51.1115 for the 2008 ozone NAAQS, and 40 CFR 51.1315 for the 2015 ozone NAAQS;
- Reasonably Available Control Measures (RACM) demonstration element as meeting the requirements of CAA section 172(c)(1) for the 2008 and 2015 ozone NAAQS, 40 CFR 51.1112(c) for the 2008 ozone NAAQS, and 40 CFR 51.1312(c) for the 2015 ozone NAAQS;

- Attainment demonstration element for the 2008 ozone NAAQS as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108;
- Attainment demonstration element for the 2015 ozone NAAQS as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1308, and the related commitments by the California Air Resources Board (CARB) (through CARB Resolution 20–29) to achieve an aggregate emissions reduction of 4 tpd of NO_X by 2032 in the San Diego County area and by the District (through District Resolution 20–166) to achieve emissions reductions of 1.7 tpd of NO_X by 2032;
- Rate of Progress (ROP) demonstration element as meeting the requirements of CAA section 182(b)(1) for the 2008 and 2015 ozone NAAQS, 40 CFR 51.1110(a)(2) for the 2008 ozone NAAQS, and 40 CFR 51.1310(a)(2) for the 2015 ozone NAAQS;
- Reasonable Further Progress (RFP) demonstration element as meeting the requirements of CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B) for the 2008 and 2015 ozone NAAQS, 40 CFR 51.1110(a)(2)(i) and (ii) for the 2008 ozone NAAQS, and 40 CFR 51.1310(a)(2)(ii) for the 2015 ozone NAAQS;
- Vehicle Miles Traveled (VMT) emissions offset demonstration element as meeting the requirements of CAA section 182(d)(1)(A) for the 2008 and 2015 ozone NAAQS, 40 CFR 51.1102 for the 2008 ozone NAAQS, and 40 CFR 51.1302 for the 2015 ozone NAAQS;
- Motor vehicle emissions budgets for the 2020 and 2023 RFP milestone years and the 2026 attainment year (see Table 1) because they are consistent with the RFP and attainment demonstrations for the 2008 ozone NAAQS approved herein and meet the other criteria in 40 CFR 93.118(e)(4);

TABLE 1—MOTOR VEHICLE EMISSIONS BUDGETS FOR THE 2008 OZONE NAAQS IN THE SAN DIEGO COUNTY AREA

[Summer planning inventory, tpd]

Budget year	VOC	NO_X
2020	16.3	28.1
2023	13.6	19.3
2026	12.1	17.3

Source: 2020 Plan, Table 3–1.

- Motor vehicle emissions budgets for the 2023, 2026, and 2029 RFP milestone years and the 2032 attainment year (see Table 2) because they are consistent with the RFP and attainment demonstrations for the 2015 ozone NAAQS approved herein and meet the other criteria in 40 CFR 93.118(e)(4);

TABLE 2—MOTOR VEHICLE EMISSIONS BUDGETS FOR THE 2015 OZONE NAAQS IN THE SAN DIEGO COUNTY AREA

[Summer planning inventory, tpd]

Budget year	VOC	NO_X
2023	13.6	19.3
2026	12.1	17.3
2029	11.0	15.9
2032	10.0	15.1

Source: 2020 Plan, Table 4–1.

- General conformity budgets (or growth increments, in this case) for the Department of the Navy (DoN) and United States Marine Corps (USMC), and for the San Diego International Airport (SDIA), see Table 3, as meeting the requirements of CAA section 176(c) and 40 CFR 93.161;

TABLE 3—FACILITY-WIDE GENERAL CONFORMITY BUDGETS (INCREMENTS OF GROWTH) FOR THE DEPARTMENT OF THE NAVY AND UNITED STATES MARINE CORPS, AND FOR THE SAN DIEGO INTERNATIONAL AIRPORT IN SAN DIEGO COUNTY

[Summer planning inventory, tpd]

Facility	VOC	NO_X
DoN and USMC	1.08	8.34
SDIA	0.141	1.756

Source: 2020 Plan, pp. 18 and 19.

- Enhanced vehicle inspection and maintenance program element in the 2020 Plan, as supplemented by the San Diego County area portion of the Smog Check Certification, as meeting the requirements of CAA section 182(c)(3) for the 2008 and 2015 ozone NAAQS, 40 CFR 51.1102 for the 2008 ozone NAAQS, and 40 CFR 51.1302 for the 2015 ozone NAAQS;
- Clean fuels fleet program element as meeting the requirements of CAA sections 182(c)(4)(A) and 246 for the 2008 and 2015 ozone NAAQS, 40 CFR 51.1102 for the 2008 ozone NAAQS, and 40 CFR 51.1302 for the 2015 ozone NAAQS;
- New Source Review program element as meeting the requirements of CAA sections 172(c)(5), 173, and 182(a)(2)(C) for the 2008 and 2015 ozone NAAQS, 40 CFR 51.1114 for the 2008 ozone NAAQS, and 40 CFR 51.1314 for the 2015 ozone NAAQS; and
- Enhanced monitoring element as meeting the requirements of CAA

section 182(c)(1) for the 2008 and 2015 ozone NAAQS, 40 CFR 51.1102 for the 2008 ozone NAAQS, and 40 CFR 51.1302 for the 2015 ozone NAAQS.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, this action does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. However, as described in section III (Environmental Justice Considerations) of this document, the District does participate in the State's environmental justice program. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of this action, this action is expected to have a neutral to positive impact on the air quality of San Diego County. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898, to achieve environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 21, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended 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 F—California

■ 2. In § 52.220, add paragraphs (c)(581)(ii)(A)(*2*) through (*5*) and (c)(581)(ii)(B), reserved paragraph (c)(610), and paragraph (c)(611) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(581) * * *

(ii) * * *

(A) * * *

(*2*) ''2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego County (October 2020),'' adopted on October 14, 2020, excluding the ''Emissions Statement Rule Certification,'' and the contingency measure element.

(*3*) Resolution 20–166, dated October 14, 2020, adopting the ''2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego County (October 2020),'' including a commitment to achieve emissions reductions of 1.7 tons per day of NO_X by 2032 through adoption to amendments to San Diego County Air Pollution Control District Rules 69.4.1 and 69.2.1 and to the adoption of new San Diego County Air Pollution Control District Rule 69.2.2.

(*4*) Letter dated July 31, 2023, from Ted Anasis, Manager, Airport Planning, San Diego International Airport, to Nick Cormier, San Diego County Air Pollution Control District.

(*5*) Letter dated August 16, 2023, from J.C. Golumbfskie-Jones, Fleet Environmental Director, Commander Navy Region Southwest, Department of the Navy, to Paula Forbis, Air Pollution Control Officer, San Diego County Air Pollution Control District.

(B) California Air Resources Board.

(*1*) Resolution 20–29, dated November 19, 2020, adopting a commitment to achieve an aggregate emissions reduction of 4.0 tons per day of NO_X in San Diego County by 2032 and a commitment from the California Air Resources Board to propose to the Board the Heavy-Duty Engine and Vehicle Omnibus Regulation, Advanced Clean Trucks Regulation, and Heavy Duty Vehicle Inspection Program and Periodic Smoke Inspection Program.

(*2*) [Reserved]

* * * * *

(610) [Reserved]

(611) The following materials were submitted on April 26, 2023, by the Governor's designee.

(i) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board.

(*1*) The San Diego County area portion of the ''California Smog Check Performance Standard Modeling and Program Certification for the 70 Parts Per Billion (ppb) 8-Hour Ozone Standard,'' adopted on March 23, 2023.

(*2*) [Reserved]

(B) [Reserved]

[FR Doc. 2024–04106 Filed 2–29–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2022–0984; FRL–11401–02–R6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Arkansas; Negative Declaration for Existing Sulfuric Acid Plants; Plan Revision for Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving the CAA section 111(d) State plan revision submitted by the State of Arkansas for existing kraft pulp mills subject to the Kraft Pulp Mills Emission Guidelines (EG). The Arkansas section 111(d) plan revision for kraft pulp mills contains administrative changes to the State regulations and also aligns compliance testing requirements to make it consistent with EPA's kraft pulp mills new source performance standards. EPA is also notifying the public that we have received a CAA section 111(d) negative declaration from Arkansas for existing sulfuric acid plants subject to the Sulfuric Acid Plants EG. This negative declaration certifies that existing sulfuric acid plants subject to the Sulfuric Acid Plants EG and the requirements of sections 111(d) of the CAA do not exist within Arkansas. The EPA is approving the State plan revision for existing kraft pulp mills, accepting the negative declaration for existing sulfuric acid plants, withdrawing its approval of the Arkansas State plan for existing sulfuric acid plants, and amending the agency regulations in accordance with the requirements of the CAA.

DATES: This rule is effective on April 1, 2024. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register April 1, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2022–0984. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division—State Planning and Implementation Branch, (214) 665–7346, *ruan-lei.karolina@epa.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our October 23, 2023 proposal (88 FR 72723). In that document we proposed to approve the Arkansas State plan revision for existing kraft pulp mills, accept the negative declaration for existing sulfuric acid plants and withdraw approval of the Arkansas State plan for existing sulfuric acid plants, and amend the agency regulations at 40 CFR part 62, subpart E, in accordance with the requirements of the CAA. EPA proposed to find that Arkansas' submittal, submitted by Arkansas Department of Energy and Environment, Division of Environmental Quality (ADEQ) on June 20, 2022, and supplemented on August 24, 2022, and August 31, 2022, meets the CAA section 111(d) requirements for plan revisions, negative declarations, and plan approval withdrawals in accordance with 40 CFR part 60, subpart B, 40 CFR part 62, subpart A, and the applicable EG requirements.

We did not receive any comments regarding our proposal.

II. Final Action

In this final action, the EPA is amending 40 CFR part 62, subpart E, to reflect EPA's approval of the Arkansas plan revision for existing kraft pulp mills, acceptance of the Arkansas negative declaration for existing sulfuric acid plants, and the withdrawal of EPA's approval of the Arkansas State plan for existing sulfuric acid plants. EPA takes this action in accordance with the requirements under section 111(d) of the CAA.

III. Environmental Justice Considerations

Information on Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) and how EPA defines environmental justice can be found in the section titled ''Statutory and Executive Order Reviews'' in this final rule. EPA provided additional analysis of environmental justice associated with this action in our October 23, 2023 proposal (88 FR 72723) for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action.

This final action is approving Arkansas's June 20, 2022, CAA section 111(d) plan revision for kraft pulp mills and accepting Arkansas's negative declaration for existing sulfuric acid plants; changes from the previously approved Arkansas plan for kraft pulp mills are discussed under the section titled ''The EPA's Evaluation'' in the proposed rule for this action (88 FR 72723, October 23, 2023). Total reduced sulfur (TRS) is considered a welfare-related pollutant. Information on TRS and its relationship to negative health impacts can be found at the **Federal Register** document titled ''Kraft Pulp Mills, Notice of Availability of Final Guideline Document'' (44 FR 29828, May 22, 1979). We expect that this action will generally have neutral

environmental and health impacts on all populations, including people of color and low-income populations, in Arkansas that are located near an existing kraft pulp mill. At a minimum, this action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to attain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Arkansas Pollution Control and Ecology Commission (APC & EC) Rule 19, Chapter 8, approved January 28, 2022, which is part of the CAA section 111(d) Plan applicable to existing kraft pulp mills subject to the Kraft Pulp Mills Emission Guidelines within ADEQ's jurisdiction in the State of Arkansas. The regulatory provisions of APC & EC Rule 19, Chapter 8, incorporate the Kraft Pulp Mills Emission Guidelines promulgated by the EPA and provide emission standards for the control of existing kraft pulp mills, as defined in 40 CFR 60.281(a) and under the Kraft Pulp Mills Emission Guidelines, that commenced construction, modification, or reconstruction on or before September 24, 1976. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). This incorporation by reference has been approved by the Office of the Federal Register and the plan is federally enforceable under the CAA as of the effective date of this final rulemaking.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d) submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) State plan submissions and negative declarations, EPA's role is to approve State choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason:

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA (44 U.S.C. 3501 *et seq.*) because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

This action is certified to not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action will approve plan revisions and accept negative declarations pursuant to CAA section 111(d) and will therefore have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local, or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action will not apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definitions of ''covered regulatory action'' in section 2–202 of the Executive order. Therefore, this action is not subject to Executive Order 13045 because it approves a State program.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution and Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. This action is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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

commercial operations or programs and policies.''

The air agency did not evaluate environmental justice considerations as part of its submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as described in the section titled ''Environmental Justice Considerations'' in the proposed rule associated with this action (88 FR 72723, October 23, 2023). The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral impact on the air quality of the affected area. In addition, there is no information in the record upon which this action is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

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

Dated: February 22, 2024.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart E—Arkansas

■ 2. Amend § 62.850 by revising paragraphs (c)(1) and (2) and removing and reserving paragraph (c)(3) to read as follows:

§ 62.850 Identification of plan.

* * * * *

(c) * * *

(1) Kraft pulp mills.

(2) Municipal solid waste landfills.

(3) [Reserved]

■ 3. Revise § 62.855 to read as follows:

§ 62.855 Identification of plan—negative declaration.

Submittal from the Arkansas Department of Energy and Environment, Division of Environmental Quality (ADEQ) dated June 20, 2022, and supplemented on August 24, 2022, and August 31, 2022, certifying that there are no known existing sulfuric acid plants subject to the Sulfuric Acid Plants Emission Guidelines and 40 CFR part 60, subpart Cd, within its jurisdiction.

■ 4. Revise § 62.865 to read as follows:

§ 62.865 Identification of plan.

(a) *Identification of plan.* Control of air emissions from existing kraft pulp mills, as adopted by the State of Arkansas on January 28, 2022, and submitted on June 20, 2022, by the Governor in a letter dated May 12, 2022. The plan includes the regulatory provisions cited in paragraph (d) of this section, which EPA incorporates by reference.

(b) *Identification of sources.* The plan, as adopted by the State of Arkansas on January 28, 2022, and submitted on June 20, 2022, applies to existing kraft pulp mills subject to the Kraft Pulp Mills Emission Guidelines (*i.e.,* kraft pulp mills, as defined in 40 CFR 60.281(a), that commenced construction, reconstruction, or modification on or before September 24, 1976) within its jurisdiction in the State of Arkansas.

(c) *Effective date.* The effective date of the plan is April 1, 2024.

(d) *Incorporation by reference.* The material listed in this paragraph (d) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the EPA and at the National Archives and Records Administration (NARA). Contact the EPA Region 6 office at 1201 Elm Street, Suite 500, Dallas, Texas 75270; phone 214–665–2200. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the State of Arkansas, Office of the Secretary of State, Arkansas Register, State Capitol, Room 026, Little Rock, AR 72201, *arkansasregister@sos.arkansas.gov, https://www.sos.arkansas.gov/rules-regulations/arkansas-register/.*

(1) Arkansas Pollution Control and Ecology Commission (APC&EC) Rule No. 19, Rules of the Arkansas Plan of Implementation for Air Pollution Control, Chapter 8, 111(d) Designated Facilities, approved January 28, 2022.

(2) [Reserved]

[FR Doc. 2024–04102 Filed 2–29–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0595; FRL–11726–01–OCSPP]

1,4-Bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione in Pesticide Formulations; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione, when used as an inert ingredient (colorant/dye) on growing crops and raw agricultural commodities pre- and post-harvest in/on animals, limited to a maximum concentration of 0.5% in a pesticide formulation, and in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils not to exceed 300 ppm in the end-use concentration. Spring Regulatory Sciences on behalf of Colorants Solutions (new name Heubach Colorants USA LLC) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an

exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione, when used in accordance with the terms of those exemptions.

DATES: This regulation is effective March 1, 2024. Objections and requests for hearings must be received on or before April 30, 2024 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0595, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0595 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before April 30, 2024. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0595, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets#express*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets*.

II. Petition for Exemption

In the **Federal Register** of August 30, 2022 (87 FR 52868, FRL–9410–04), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11698) by Spring Regulatory Sciences, 6620 Cypresswood Dr., Suite 250, Spring, TX 77379 on behalf of Heubach Colorants USA LLC, 4000 Monroe Road, Charlotte, NC 28205. The petition requested that 40 CFR be amended by establishing an exemption from the requirement of a tolerance for residues of 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione (CAS Reg. No. 123944–63–8) when used as an inert ingredient (colorant/dye) in pesticide formulations applied to growing crops or raw agricultural commodities pre- and post-harvest under 40 CFR 180.910, in/on animals under 40 CFR 180.930, and in food contact sanitizing solutions under 40 CFR 180.940(a). That document referenced a summary of the petition prepared by Spring Regulatory Sciences on behalf of Heubach Colorants USA LLC, the petitioner, which is available in the docket, *https://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is modifying the petitioner's request to limit the maximum concentration to no more than 0.5% of 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione under 40 CFR 180.910, and 40 CFR 180.930, and not to exceed 300 ppm in the end-use concentration under 40 CFR 180.940(a). This limitation is based on the Agency's risk assessment which can be found at *https://www.regulations.gov* in document IN–11698; 1,4-Bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione. Human Health Risk Assessment and Ecological Effects Assessment to Support Inert Ingredient Approval for use in Pesticide Formulations in docket ID number EPA–HQ–OPP–2022–0595.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol

dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. When making a safety determination for an exemption for the requirement of a tolerance FFDCA section 408(c)(2)(B) directs EPA to consider the considerations in section 408(b)(2)(C) and (D). Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Section 408(b)(2)(D) lists other factors for EPA consideration making safety determinations, *e.g.,* the validity, completeness, and reliability of available data, nature of toxic effects, available information concerning the cumulative effects of the pesticide chemical and other substances with a common mechanism of toxicity, and available information concerning aggregate exposure levels to the pesticide chemical and other related substances, among others.

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

1,4-Bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione exhibits low levels of acute toxicity via the oral and dermal routes of exposure. In the rat, the oral and dermal LD_{50}s are greater than 2,000 milligrams/kilogram (mg/kg). Acute inhalation toxicity is not expected due to the very low vapor pressure. It is not irritating to the rabbit eye. It is not expected to be irritating to the skin based on the absence of skin irritation in the acute dermal toxicity study and low exposure. It is not a dermal sensitizer.

The most sensitive effects were observed in a 28-day oral toxicity study with 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione. Increased levels of methemoglobin, total bilirubin and bile acids and decreased blood urea nitrogen were observed in female rats at the lowest observed adverse level (LOAEL) of 330 mg/kg/day. The no observed adverse effect level (NOAEL) is 110 mg/kg/day. Fetal susceptibility was not observed in the reproduction/developmental toxicity screening study in rats. Maternal (decreased thyroid hormone levels) and offspring (decreased bodyweights) toxicity was observed at the same dose, the LOAEL of 1,000 mg/kg/day. The NOAEL is 300 mg/kg/day. No reproduction toxicity effects are seen in the available studies. The concern for carcinogenicity is low, based on QSAR metabolism data showing the absence of metabolites associated with carcinogenicity and negative results in *in vitro* mutagenicity studies.

Neurotoxicity and immunotoxicity toxicity studies are not available for review. However, no evidence of neurotoxicity or immunotoxicity was observed in the submitted studies.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program.*

An acute dietary endpoint was not selected because no effect attributable to a single dose was identified in the

database. The 28-day oral toxicity study in rats is selected for the chronic dietary exposure scenario as well as short- and intermediate-term incidental oral, dermal and inhalation exposure scenarios. The NOAEL is 110 mg/kg/day, and the LOAEL is 330 mg/kg/day based on increased levels of methemoglobin, total bilirubin and bile acids and decreased blood urea nitrogen in females. This study is appropriate for the duration of exposure, it is protective of the general population, and it is protective of the most sensitive lifestage (children). The standard inter- and intra-species uncertainty factors of 10× are applied. An additional 10× uncertainty factor was applied to account for the use of a short-term study for chronic dietary exposure. The default factor of 100% is applied for the dermal absorption rate and the inhalation absorption rate.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione in food as follows:

In conducting the dietary exposure assessment using the Dietary Exposure Evaluation Model DEEM–FCIDTM, Version 4.02, EPA used food consumption information from the U.S. Department of Agriculture's (USDA's) 2005–2010 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, no residue data were submitted for 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Update to D361707: Dietary Exposure and Risk Assessments for the Inerts.'' (12/21/2021) and can be found at *https://www.regulations.gov* in docket ID number EPA–HQ–OPP–2018–0090. In the dietary exposure assessments, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest levels of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations of active ingredient in agricultural products are generally at least 50 percent of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient. In the case of 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione, EPA made a specific adjustment to the dietary exposure assessment to account for the use limitations of the amount of 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione that may be in pesticide formulations (limited to no more than 0.5%) present at the maximum limitation rather than at equal quantities with the active ingredient.

For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione, a conservative drinking water concentration value of 100 parts per billion (ppb) based on screening level modeling was used to assess the contribution to drinking water for chronic dietary risk assessments for 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione.

To assess dietary exposure due to its use in antimicrobial products, the EPA calculated the Estimated Daily Intake (EDI) and Daily Dietary Dose (DDD) as described in the Food Drug Administration (FDA) model, based on a maximum concentration of 300 ppm in the pesticide formulation. The assessment considered: application rates, residual solution or quantity of solution remaining on the treated surface without rinsing with potable water, surface area of the treated surface which comes into contact with food, pesticide migration fraction, and body weight. These assumptions are based on FDA guidelines (2003).

2. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Although there are non-pesticidal uses for 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione, no reliable exposure information is available to EPA on those uses. 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione may be used as an inert ingredient in pesticide products that are registered for specific uses that may result in residential exposure, such as pesticides used in and around the home. Therefore, screening level residential handler and post-application risk assessments have been performed for common residential exposure scenarios, using assumptions detailed in the 2012 Residential SOPs (available at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide*).

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione to share a common mechanism of toxicity with any other substances, and 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that 1,4-bis[[3-[2-(2-

hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides*.

D. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10×) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10×, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on the evaluation of available toxicity studies, there is low concern for pre- and postnatal susceptibility from exposure to chemical name. The FQPA safety factor has been reduced to 1× because: (1) the toxicity database is adequate to characterize potential pre- and postnatal risk; (2) the established PoD (110 mg/kg/day) will be protective of the body weight decreases in offspring seen at 1,000 mg/kg/day in the combined reproduction/developmental toxicity screening study in rats; (3) no evidence of neurotoxicity was observed in the database; and (4) the assumptions for the exposure assessment are conservative and unlikely to underestimate risk.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione from food and water will utilize ~20.4% and 53.3% of the cPAD for the U.S. population and children 1 to 2 years old and non-nursing infants (the most highly exposed populations).

3. *Short- and intermediate term risks.* Short- and intermediate term aggregate exposures takes into account short- and intermediate-term residential exposures plus chronic exposures to food and water (considered to be a background exposure level).

1,4-Bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione is currently used as an inert ingredient in non-pesticidal products and pesticidal products that are registered for uses that could result in short- and intermediate-term residential exposures, and the Agency has determined that it is appropriate to aggregate chronic exposures through food and water with short- and intermediate-term residential exposures to 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione. Although, there are non-pesticide exposures (*i.e.* colorant for fabric and home care products including laundry) to 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione, aggregate exposures consider exposure due to pesticide uses only since no reliable exposure information is available for non-pesticidal uses.

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded the combined short- and intermediate-term food, water, and residential exposures result in an aggregate risk index (ARI) of 4.3 for adults. Adult residential exposure combines high end dermal and inhalation handler exposure from aerosol spray/trigger pump with a high-end post application dermal exposure from contact with treated lawns. The combined short- and intermediate-term aggregated food, water, and residential pesticide exposures result in an aggregate ARI of 1.69 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). Because EPA's level of concern for 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione is an ARI of 1 or below, these ARIs are not of concern.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione in or on any food commodities. EPA is establishing a limitation on the amount of 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione that may be used in pesticide formulations applied pre- and post-harvest, in/on animals; and in food contact sanitizing solutions. This limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use that exceeds 0.5% 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione in the final pesticide formulations to be applied pre- and post-harvest, in/on animals; and not to exceed 300 ppm in the end-use concentration when ready for use antimicrobial formulations (food-contact surface sanitizing solutions).

B. Revisions to Petitioned-For Tolerances

FFDCA section 408(d)(4)(A)(i) permits the Agency to finalize a tolerance that varies from that sought by the petition. EPA is establishing a tolerance exemption for residues of 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione (CAS Reg. No. 123944–63–8) with concentration limits not sought by the petition based on the Agency's risk assessment.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of 1,4-bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione (CAS Reg. No. 123944–63–8) when used as an inert ingredient (colorant/dye) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest under 40 CFR 180.910 and in/

on animals under 40 CFR 180.930, limited to a maximum concentration of 0.5% in a pesticide formulation and in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils under 40 CFR 180.940(a) not to exceed 300 ppm in the end-use concentration.

VII. Statutory and Executive Order Reviews

This action establishes exemptions from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the National Government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 26, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, amend table 1 to 180.910 by adding in alphabetical order an entry for ''1,4-Bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione (CAS Reg. No. 123944–63–8)'' to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.910

Inert ingredients	Limits	Uses
* *	* * *	* *
1,4-Bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione (CAS Reg. No. 123944–63–8).	0.5% by weight	Dye, coloring agent.
* *	* * *	* *

■ 3. In § 180.930, amend table 1 to 180.930 by adding in alphabetical order an entry for ''1,4-Bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione (CAS Reg. No. 123944–63–8)'' to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.930

Inert ingredients	Limits	Uses
* *	* * *	* *
1,4-Bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione (CAS Reg. No. 123944–63–8).	0.5% by weight	Dye, coloring agent.
* *	* * *	* *

■ 4. In § 180.940, amend table 1 to paragraph (a) by adding in alphabetical order an entry for ''1,4-Bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione'' to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Pesticide chemical	CAS Reg. No.	Limits
* *	* * *	* *
1,4-Bis[[3-[2-(2-hydroxyethoxy)ethoxy]propyl]amino]-9,10-anthracenedione.	123944–63–8	When ready for use, the end-use concentration is not to exceed 300 ppm.
* *	* * *	* *

* * * * *

[FR Doc. 2024–04355 Filed 2–29–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0295; FRL–11719–01–OCSPP]

Various Fragrance Components in Pesticide Formulations; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of various fragrance components listed in Unit II of this document when they are used as inert ingredients in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils when the end-use concentration does not exceed 100 parts per million (ppm). Innovative Reform Group, on behalf of The Clorox Company, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of various fragrance components, when used in accordance with the terms of those exemptions.

DATES: This regulation is effective March 1, 2024. Objections and requests for hearings must be received on or before April 30, 2024 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0295, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal

Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0295 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before April 30, 2024. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0295, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets#express.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of June 24, 2020 (85 FR 37806, FRL–10010–82), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11373) by Innovative Reform Group, on behalf of The Clorox Company, 4900 Johnson Dr., Pleasanton, CA 94588. The petition requested that 40 CFR 180.940(a) be amended by establishing exemptions from the requirement of a tolerance for residues of: (Z)-β-1-(2,6,6-Trimethyl-1-cyclohexen-1-yl)-2-buten-1-one; (2E)-1-(2,6,6-Trimethyl-1-cyclohexen-1-yl)-2-buten-1-one (CAS Reg. No. 35044–68–9; 23726–92–3; 23726–91–2); 1,3,5-Undecatriene (CAS Reg. No. 16356–11–9); 1-Cyclohexylethanol (CAS Reg. No. 1193–81–3); 1-Octen-3-yl acetate (CAS Reg. No. 2442–10–6); 2-(p-Tolyl)propionaldehyde (CAS Reg. No. 99–72–9); 2,3,6-Trimethylphenol (CAS Reg. No. 2416–94–6); 2,5-Xylenol (CAS Reg. No. 95–87–4); 2,6-Dimethoxyphenol (CAS Reg. No. 91–10–1); 2,6-Dimethyl-4-heptanol (CAS Reg. No. 108–82–7); 2,6-Xylenol (CAS Reg. No.576–26–1); 2-Cyclohexen-1-one, 2-hydroxy-3-methyl-6-(1-methylethyl)- (CAS Reg. No. 490–03–9); 2-Heptanol (CAS Reg. No.543–49–7); 2-Isopropylphenol (CAS Reg. No. 88–69–7); 2-Methoxy-4-methylphenol (CAS Reg. No. 93–51–6); 2-Methoxy-4-vinylphenol (CAS Reg. No. 7786–61–0); 2-Methyl-4-phenyl-2-butyl acetate (CAS Reg. No. 103–07–1); 2-phenylethyl 2-methylbutyrate (CAS Reg. No. 24817–51–4); 2-Propanol (CAS Reg. No. 67–63–0); 3,3,5-Trimethylcyclohexanol (CAS Reg. No. 116–02–9); 3,4-Xylenol (CAS Reg. No. 95–65–8); 3,7-Dimethyl-1,3,6-octatriene (CAS Reg. No. 13877–91–3); 3-Buten-2-one, 4-(2,6,6-trimethyl-1-cyclohexen-1-yl)- (CAS Reg. No. 14901–07–6; 79–77–6); 3-Methyl-2-butenyl benzoate (CAS Reg. No. 5205–11–8); 3-Methylindole (CAS Reg. No. 83–34–1); 3-Phenylpropionaldehyde (CAS Reg. No. 104–53–0); 3-Phenylpropionic acid (CAS Reg. No. 501–52–0); 3-Phenylpropyl acetate (CAS Reg. No. 122–72–5); 3-Phenylpropyl cinnamate (CAS Reg. No. 122–68–9); 4-(p-Methoxyphenyl)-2-butanone (CAS Reg. No. 104–20–1); 4,7,7-Trimethyl-6-thiabicyclo[3.2.1]octane (CAS Reg. No. 68398–18–5); 4-Ethylbenzaldehyde (CAS Reg. No. 4748–78–1); 4-Ethylguaiacol (CAS Reg. No. 2785–89–9); 4-Mercapto-4-methyl-2-pentanone (CAS Reg. No. 19872–52–7); 4-Methoxy-2-methyl-2-butanethiol (CAS Reg. No. 94087–83–9); 5-(cis-3-Hexenyl)dihydro-5-methyl-2(3H)furanone (CAS Reg. No. 70851–61–5); Acetanisole (CAS Reg. No. 100–06–1); Allspice oil (Pimenta officinalis Lindl.) (CAS Reg. No. 8006–77–7); Anisyl formate (CAS Reg. No. 122–91–8); Anisyl propionate (CAS Reg. No. 7549–33–9); Balsam oil, Peru (Myroxylon pereirae Klotzsch) (CAS Reg. No. 8007–00–9); Benzaldehyde, 4-hydroxy-3-methoxy- (CAS Reg. No. 121–33–5); Benzaldehyde, methyl- (CAS Reg. No. 1334–78–7) Benzene, 1,2-dimethoxy- (CAS Reg. No. 91–16–7); Benzene, 2-methoxy-4-methyl-1-(1-methylethyl)- (CAS Reg. No. 1076–56–8); Benzeneacetaldehyde (CAS Reg. No. 122–78–1); Benzoic acid (CAS Reg. No. 65–85–0); Benzoin gum, Sumatra (CAS Reg. No. 9000–05–9); Benzyl acetate (CAS Reg. No. 140–11–4); Benzyl benzoate (CAS Reg. No. 120–51–4); Benzyl cinnamate (CAS Reg. No. 103–41–3); Benzyl formate (CAS Reg. No. 104–57–4); Benzyl isovalerate (CAS Reg. No. 103–38–8); Benzyl phenylacetate (CAS Reg. No. 102–16–9); Benzyl salicylate (CAS Reg. No. 118–58–1); Benzyl trans-2-methyl-2-butenoate (CAS Reg. No. 37526–88–8); Bicyclo[3.1.1]heptane, 6,6-dimethyl-2-methylene- (CAS Reg. No. 127–91–3); Bisabolene (CAS Reg. No. 495–62–5); Borneol (CAS Reg. No. 507–70–0); Butyl sulfide (CAS Reg. No. 544–40–1); Cadinene (CAS Reg. No. 29350–73–0; 523–47–7); Camphene (CAS Reg. No. 79–92–5); Cananga oil (CAS Reg. No. 68606–83–7); Carvyl acetate (CAS Reg. No. 97–42–7); Cassia bark oil (CAS Reg. No. 8007–80–5); Cinnamic acid; trans-Cinnamic acid (CAS Reg. No. 621–82–9; 140–10–3); Cinnamic aldehyde (CAS Reg. No. 104–55–2; 14371–10–9); Cinnamon leaf oil (CAS Reg. No. 84649–98–9); Cinnamyl acetate (CAS Reg. No. 103–54–8); Cinnamyl benzoate (CAS Reg. No. 5320–75–2); Cinnamyl cinnamate (CAS Reg. No. 122–69–0); Cinnamyl formate (CAS Reg. No. 104–65–4); Cinnamyl isobutyrate (CAS Reg. No. 103–59–3); Cinnamyl propionate (CAS Reg. No. 103–56–0); cis-3-Hexenyl benzoate (CAS Reg. No. 25152–85–6); Citrus, ext. (CAS Reg. No. 94266–47–4); Cloves (Eugenia spp.) (CAS Reg. No. 84961–50–2); Cornmint oil (CAS Reg. No. 68917–18–0); Currant buds black absolute (Ribes nigrum L.) (CAS Reg. No. 68606–81–5); Cyclohexadiene, methyl- (CAS Reg. No. 30640–46–1; 1888–90–0); delta-3-Carene (CAS Reg. No. 13466–78–9); d-Limonene (CAS Reg. No. 5989–27–5); endo-Bornyl acetate (CAS Reg. No. 76–49–3); Ethyl 3-phenylpropionate (CAS Reg. No. 2021–28–5); Ethyl anthranilate (CAS Reg. No. 87–25–2); Ethyl benzoylacetate (CAS Reg. No. 94–02–0); Ethyl cinnamate (CAS Reg. No. 103–36–6); Ethyl phenylacetate (CAS Reg. No. 101–97–3); Eugenyl acetate (CAS Reg. No. 93–28–7); gamma-Ionone (CAS Reg. No. 79–76–5); Geranyl benzoate (CAS Reg. No. 94–48–4); Geranyl phenylacetate (CAS Reg. No. 102–22–7); Guaiacol (CAS Reg. No. 90–05–1); Guaiene (CAS Reg. No. 88–84–6); Hexyl benzoate (CAS Reg. No. 6789–88–4); Isoamyl benzoate (CAS

Reg. No. 94–46–2); Isoamyl cinnamate (CAS Reg. No. 7779–65–9); Isoamyl phenylacetate (CAS Reg. No. 102–19–2); Isoamyl salicylate (CAS Reg. No. 87–20–7); Isobornyl acetate (CAS Reg. No. 125–12–2); Isobutyl benzoate (CAS Reg. No. 120–50–3); Isobutyl cinnamate (CAS Reg. No. 122–67–8); Isobutyl phenylacetate (CAS Reg. No. 102–13–6); Isobutyl salicylate (CAS Reg. No. 87–19–4); Isoeugenol (CAS Reg. No. 97–54–1); Isoeugenyl acetate (CAS Reg. No. 93–29–8); iso-Methyl-beta-ionone (CAS Reg. No. 79–89–0); Isopropyl acetate (CAS Reg. No. 108–21–4); Isopulegol (CAS Reg. No. 89–79–2); Jasmine oil (Jasminum grandiflorum L.) (CAS Reg. No. 8022–96–6); Juniper oil (Juniperus communis L.) (CAS Reg. No. 8002–68–4); Linalyl benzoate (CAS Reg. No. 126–64–7); Linalyl cinnamate (CAS Reg. No. 78–37–5); m-Dimethoxybenzene (CAS Reg. No. 151–10–0); Menthol (CAS Reg. No. 15356–70–4; 89–78–1; 1490–04–6); Methyl 3-methylthiopropionate (CAS Reg. No. 13532–18–8); Methyl anisate (CAS Reg. No. 121–98–2); Methyl N-acetylanthranilate (CAS Reg. No. 2719–08–6); Methyl n-propyl ketone (CAS Reg. No. 107–87–9); Methyl o-methoxybenzoate (CAS Reg. No. 606–45–1); Methyl phenylacetate (CAS Reg. No. 101–41–7); Methyl salicylate (CAS Reg. No. 119–36–8); Methyl sulfide (CAS Reg. No. 75–18–3); Methyl-alpha-ionone (CAS Reg. No. 127–42–4); Methylbenzyl acetate (mixed o,m,p) (CAS Reg. No. 360676–70–1; 2216–45–7; 17373–93–2); Methyl-beta-ionone (CAS Reg. No. 127–43–5); Neroli bigarde oil (Citrus aurantium L.) (CAS Reg. No. 8016–38–4); Oil of Bergamot (CAS Reg. No. 8007–75–8); Oil of camphor (CAS Reg. No. 8008–51–3); Oil of orange (CAS Reg. No. 8008–57–9); Oils, Fir (CAS Reg. No. 8021–29–2); Oils, mimosa (CAS Reg. No. 8031–03–6); Oils, peppermint (CAS Reg. No. 8006–90–4); Oils, spruce (CAS Reg. No. 8008–80–8); Oils, thyme (CAS Reg. No. 8007–46–3); o-Propylphenol (CAS Reg. No. 644–35–9); Orris absolute (Iris pallida) (CAS Reg. No. 8002–73–1); p,alpha-Dimethylstyrene (CAS Reg. No. 1195–32–0); p-Anisyl acetate (CAS Reg. No. 104–21–2); p-Cresol (CAS Reg. No. 106–44–5); p-Dimethoxybenzene (CAS Reg. No. 150–78–7); Pepper, black, oil (Piper nigrum L.) (CAS Reg. No. 8006–82–4); peppermint (Mentha piperita) ext. (CAS Reg. No. 84082–70–2); p-Ethylphenol (CAS Reg. No. 123–07–9); Phenethyl butyrate (CAS Reg. No. 103–52–6); Phenethyl cinnamate (CAS Reg. No.103–53–7); Phenethyl formate (CAS Reg. No. 104–62–1); Phenethyl hexanoate (CAS Reg. No. 6290–37–5); Phenethyl propionate (CAS Reg. No. 122–70–3); Phenethyl salicylate (CAS Reg. No. 87–22–9); Phenethyl tiglate (CAS Reg. No. 55719–85–2); Phenol, 2,4,6-trimethyl- (CAS Reg. No. 527–60–6); Phenol, 2-methoxy-4-(2-propenyl)- (CAS Reg. No. 97–53–0); Phenyl ethyl alcohol (CAS Reg. No. 60–12–8); Phenylacetaldehyde glyceryl acetal (CAS Reg. No. 29895–73–6); Phenylacetic acid (CAS Reg. No. 103–82–2); pine needle oil (CAS Reg. No. 8000–26–8); Pine scotch oil (Pinus sylvestris L.) (CAS Reg. No. 8023–99–2); p-Isopropyl phenylacetaldehyde (CAS Reg. No. 4395–92–0); p-Isopropylacetophenone (CAS Reg. No. 645–13–6); p-Isopropylbenzyl alcohol (CAS Reg. No. 536–60–7); p-Propylphenol (CAS Reg. No. 645–56–7); Propenylguaethol (CAS Reg. No. 94–86–0); Propyl phenethyl acetal (CAS Reg. No. 7493–57–4); p-Tolyl 3-methylbutyrate (CAS Reg. No. 55066–56–3); p-Tolyl acetate (CAS Reg. No. 140–39–6); p-Tolyl isobutyrate (CAS Reg. No. 103–93–5); p-Tolyl octanoate (CAS Reg. No. 59558–23–5); p-Tolyl phenylacetate (CAS Reg. No. 101–94–0); p-Tolylacetaldehyde (CAS Reg. No. 104–09–6); Rose absolute (Rosa spp.) (CAS Reg. No. 8007–01–0); Salicylaldehyde (CAS Reg. No. 90–02–8); Schinus molle oil (Schinus molle L.) (CAS Reg. No. 68917–52–2); Storax (Liquidambar spp.) (CAS Reg. No. 8046–19–3); Tagetes oil (Tagetes erecta L.) (CAS Reg. No. 8016–84–0); Tetradecanoic acid, 1-methylethyl ester (CAS Reg. No. 110–27–0); Thyme (Thymus Vulgaris) Oil (CAS Reg. No. 84929–51–1); Thymol (8CA) (CAS Reg. No. 89–83–8); Tolu, balsam, gum (Myroxylon spp.) (CAS Reg. No. 9000–64–0); Turpentine, oil (CAS Reg. No. 8006–64–2); Valencene (CAS Reg. No. 4630–07–3); Vanilla (Vanilla spp.) (CAS Reg. No. 8024–06–4); Vanilla extract (Vanilla spp.) (CAS Reg. No. 84650–63–5); Vanilla tahitensis, ext. (CAS Reg. No. 94167–14–3); Wintergreen oil (CAS Reg. No. 68917–75–9); Zingerone (CAS Reg. No. 122–48–5); α-1-(2,6,6-Trimethyl-2-cyclohexen-1-yl)-2-buten-1-one (CAS Reg. No. 43052–87–5); α-Farnesene (CAS Reg. No. 125037–13–0; 502–61–4); α-Ionone (CAS Reg. No. 127–41–3); α-Irone (CAS Reg. No. 79–69–6); α-Methylbenzyl propionate (CAS Reg. No. 120–45–6); α-Phellandrene (CAS Reg. No. 99–83–2); α-Pinene (CAS Reg. No. 80–56–8); α-Propylphenethyl alcohol (CAS Reg. No. 705–73–7); α-Terpinene (CAS Reg. No. 99–86–5); β-Caryophyllene (CAS Reg. No. 87–44–5); β-Methylphenethyl alcohol (CAS Reg. No. 1123–85–9); β-Naphthyl anthranilate (CAS Reg. No. 63449–68–3); when used as inert ingredients (fragrance components) in pesticide formulations applied to food contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment with end-use concentrations not to exceed 100 ppm. That document referenced a summary of the petition prepared by Innovative Reform Group on behalf of The Clorox Company, which is available in the docket, *https://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. When making a safety determination for an exemption for the requirement of a tolerance FFDCA section 408(c)(2)(B) directs EPA to consider the considerations in section 408(b)(2)(C) and (D). Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will

result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Section 408(b)(2)(D) lists other factors for EPA consideration making safety determinations, *e.g.,* the validity, completeness, and reliability of available data, nature of toxic effects, available information concerning the cumulative effects of the pesticide chemical and other substances with a common mechanism of toxicity, and available information concerning aggregate exposure levels to the pesticide chemical and other related substances, among others.

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the various fragrance components identified in Unit II of this document, including exposure resulting from the exemptions established by this action. EPA's assessment of exposures and risks associated with these various fragrance components follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by various fragrance components identified in Unit II, as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

The Agency assessed these fragrance components via the Threshold of Toxicological Concern (TTC) approach as outlined by the European Food Safety Authority (EFSA) in their 2019 guidance document on the use of TTC in food safety assessment. Information regarding the database of studies and chemicals used to derive TTCs are reviewed therein. The TTC approach has been used by the Joint Expert Committee on Food Additives of the United Nations' (U.N.) Food and Agriculture Organization and the World Health Organization (JECFA), the former Scientific Committee on Food of the European Commission, the European Medicines Agency, and EFSA.

Information from JECFA reports as well as predictive toxicology using the Organisation for Economic Co-operation and Development (OECD) Quantitative Structure-Activity Relationships (QSAR) Toolbox was used to confirm that the fragrances listed in Unit II have low carcinogenic potential and are thus good candidates for the application of the TTC method. Although 24 chemicals had in silico carcinogenicity alerts, JECFA concluded and EPA concurs that all fragrances listed in Unit II have low carcinogenic potential, based on in vitro and/or in vivo genotoxicity studies available on the chemical or structurally related chemicals. Therefore, the TTC method can be applied to these fragrances.

TTCs are derived from a conservative and rigorous approach to establish generic threshold values for human exposure at which a very low probability of adverse effects is likely. By comparing a range of compounds by Cramer Class (classes I, II, and III which correspond to the probability of low, moderate and high toxicity) and NOEL (no-observed-effect-level), fifth percentile NOELs were established for each Cramer Class as ''Human Exposure Thresholds''. These values were 3, 0.91 and 0.15 mg/kg/day for classes I, II, and III, respectively.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program.*

The human exposure threshold value for threshold (*i.e.,* non-cancer) risks is based upon Cramer structural class. All of the fragrance components listed in Unit II are in Cramer Class I, which is defined as chemicals of simple structure and efficient modes of metabolism, suggesting low oral toxicity. Therefore, the NOEL of 3 mg/kg/day is selected as the point of departure for all exposure scenarios assessed (chronic dietary, incidental oral, dermal and inhalation exposures).

C. Exposure Assessment

1. *Dietary exposure.* In evaluating dietary exposure to each of the fragrance components listed in Unit II (*e.g.,* ingesting foods that come in contact with surfaces treated with pesticide formulations containing these fragrance components, and drinking water exposures), EPA considered exposure under the proposed exemptions at a concentration not to exceed 100 ppm for each of the listed fragrance components as well as any other sources of dietary exposure. EPA assessed dietary exposures from the fragrance components listed in Unit II in food as follows:

The dietary assessment for food contact sanitizer solutions calculated the Daily Dietary Dose (DDD) and the Estimated Daily Intake (EDI). The assessment considered application rates, residual solution or quantity of solution remaining on the treated surface without rinsing with potable water, surface area of the treated surface which

comes into contact with food, pesticide migration fraction, and body weight. These assumptions are based on U.S. Food and Drug Administration guidelines.

2. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

The fragrance components listed in Unit II may be used as inert ingredients in products that are registered for specific uses that may result in residential exposure, such as pesticides used in and around the home. The Agency conducted a conservative assessment of potential residential exposure by assessing various fragrance components in disinfectant-type uses (indoor scenarios). The Agency's assessment of adult residential exposure combines high-end dermal and inhalation handler exposure from indoor hard surface, wiping, and aerosol spray uses. The Agency's assessment of children's residential exposure includes total post-application exposures associated with contact with treated indoor surfaces (dermal and hand-to-mouth exposures).

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found the fragrance components listed in Unit II to share a common mechanism of toxicity with any other substances, nor do they appear to produce a toxic metabolite produced by other substances. For the purposes of the tolerance exemptions established in this rule, therefore, EPA has assumed that the fragrance components listed in Unit II do not have common mechanisms of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

The FQPA SF has been reduced to 1X in this risk assessment because clear NOELs and LOELs were established in the studies used to derive the endpoints (which included developmental and reproductive toxicity studies), maternal and developmental-specific 5th percentile NOELs indicate low potential for offspring susceptibility, and the conservative assumptions made in the exposure assessment are unlikely to underestimate risk.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute aggregate risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effects resulting from a single oral exposure were identified and no acute dietary endpoint was selected for any of the fragrance components listed in Unit II. Therefore, these fragrance components are not expected to pose an acute risk.

2. *Short-term aggregate risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). For residential handler short-term exposure scenarios, MOEs ranged from 140 to 2,500, while for residential post-application exposure scenarios, MOEs ranged from 380 to 7,400. These MOEs are greater than the level of concern (LOC) of 100 and therefore are not of concern. The short-term aggregate MOE is 109 for adults and 135 for children, which are greater than the LOC of 100 and therefore are not of concern.

3. *Intermediate-term aggregate risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential (dermal and inhalation) exposure plus chronic dietary exposure (food and drinking water). As the same endpoints were selected for short-term and intermediate-term exposures, intermediate-term aggregate risk is equal to the short-term aggregate risk, and it is not of concern.

4. *Chronic aggregate risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to the fragrance components listed in Unit II from food and water will utilize 19% of the cPAD for the U.S. population and 48% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Chronic residential exposure to residues of these fragrance components is not expected. Therefore, the chronic aggregate risk is equal to the chronic dietary exposure for children 1 to 2 years old (48% of the cPAD).

5. *Aggregate cancer risk for U.S. population.* There is low concern for genotoxicity/carcinogenicity in humans for the fragrance components listed in Unit II of this document. Therefore, the assessment under the TTC value for non-cancer risks is protective for all risks, including carcinogenicity.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to residues of the fragrance components listed in Unit II.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of the fragrance components listed in Unit II of this document in or on any food commodities. EPA is, however, establishing limitations on the amount of these fragrance components that may be used in antimicrobial pesticide formulations. These limitations will be enforced through the pesticide

registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use that contains these fragrance components in excess of 100 ppm in the final pesticide formulation.

B. Revisions to Petitioned-For Tolerances

The Agency is not establishing tolerance exemptions for the following fragrance ingredients because they were withdrawn by the petitioner: 2-Cyclohexen-1-one, 2-hydroxy-3-methyl-6-(1-methylethyl)- (CAS Reg. No. 490–03–9); β-Naphthyl anthranilate (CAS Reg. No. 63449–68–3); p-Cresol (CAS Reg. No. 106–44–5); A-1-(2,6,6-Trimethyl-2-cyclohexen-1-yl)-2-buten-1-one (CAS Reg. No. 43052–87–5).

EPA is also not finalizing exemptions for the following ingredients because they were already approved for use under 40 CFR 180.940(a): 2-Propanol (CAS Reg. No. 67–63–0); Benzaldehyde, 4-hydroxy-3-methoxy- (CAS Reg. No. 121–33–5); Bicyclo[3.1.1]heptane, 6,6-dimethyl-2-methylene- (CAS Reg. No. 127–91–3); Cinnamic aldehyde (CAS Reg. No. 104–55–2 & 14371–10–9); d-Limonene (CAS Reg. No. 5989–27–5); Isobornyl acetate (CAS Reg. No. 125–12–2); Methyl salicylate (CAS Reg. No. 119–36–8); Phenol, 2-methoxy-4-(2-propenyl)- (CAS Reg. No. 97–53–0); Phenyl ethyl alcohol (CAS Reg. No. 60–12–8); Thymol (8CA) (CAS Reg. No. 89–83–8); α-Pinene (CAS Reg. No. 80–56–8); β-Caryophyllene (CAS Reg. No. 87–44–5).

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of various fragrance components listed in Unit II of this document when used as an inert ingredient (fragrance component) in pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils with an end-use concentration not to exceed 100 ppm under 40 CFR 180.940(a).

VII. Statutory and Executive Order Reviews

This action establishes exemptions from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the National Government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 26, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.940 is amended by adding in alphabetical order the following inert ingredients to table 1 to paragraph (a):

■ a. Acetanisole
■ b. Allspice oil (Pimenta officinalis Lindl.)
■ c. p-Anisyl acetate
■ d. Anisyl formate
■ e. Anisyl propionate
■ f. Balsam oil, Peru (Myroxylon pereirae Klotzsch)
■ g. Benzaldehyde, methyl-
■ h. Benzene, 1,2-dimethoxy-
■ i. Benzene, 2-methoxy-4-methyl-1-(1-methylethyl)-
■ j. Benzeneacetaldehyde
■ k. Benzoic acid
■ l. Benzoin gum, Sumatra
■ m. Benzyl acetate
■ n. Benzyl benzoate
■ o. Benzyl cinnamate
■ p. Benzyl formate
■ q. Benzyl isovalerate
■ r. Benzyl phenylacetate
■ s. Benzyl salicylate
■ t. Benzyl trans-2-methyl-2-butenoate
■ u. Bisabolene
■ v. Borneol
■ w. endo-Bornyl acetate
■ x. 3-Buten-2-one, 4-(2,6,6-trimethyl-1-cyclohexen-1-yl)-
■ y. Butyl sulfide
■ z. Cadinene

■ aa. Camphene
■ bb. Cananga oil
■ cc. δ-3-Carene
■ dd. Carvyl acetate
■ ee. Cassia bark oil
■ ff. Cinnamic acid; trans-Cinnamic acid
■ gg. Cinnamon leaf oil
■ hh. Cinnamyl acetate
■ ii. Cinnamyl benzoate
■ jj. Cinnamyl cinnamate
■ kk. Cinnamyl formate
■ ll. Cinnamyl isobutyrate
■ mm. Cinnamyl propionate
■ nn. Citrus, ext.
■ oo. Cloves (Eugenia spp.)
■ pp. Cornmint oil
■ qq. Currant buds black absolute (Ribes nigrum L.)
■ rr. Cyclohexadiene, methyl-
■ ss. 1-Cyclohexylethanol
■ tt. m-Dimethoxybenzene
■ uu. p-Dimethoxybenzene
■ vv. 2,6-Dimethoxyphenol
■ ww. 2,6-Dimethyl-4-heptanol
■ xx. 3,7-Dimethyl-1,3,6-octatriene
■ yy. p,α-Dimethylstyrene
■ zz. Ethyl anthranilate
■ aaa. 4-Ethylbenzaldehyde
■ bbb. Ethyl benzoylacetate
■ ccc. Ethyl cinnamate
■ ddd. 4-Ethylguaiacol
■ eee. p-Ethylphenol
■ fff. Ethyl phenylacetate
■ ggg. Ethyl 3-phenylpropionate
■ hhh. Eugenyl acetate
■ iii. α-Farnesene
■ jjj. Geranyl benzoate
■ kkk. Geranyl phenylacetate
■ lll. Guaiacol
■ mmm. Guaiene
■ nnn. 2-Heptanol
■ ooo. cis-3-Hexenyl benzoate
■ ppp. 5-(cis-3-Hexenyl)dihydro-5-methyl-2(3H)furanone
■ qqq. Hexyl benzoate
■ rrr. α-Ionone
■ sss. γ-Ionone
■ ttt. α-Irone
■ uuu. Isoamyl benzoate
■ vvv. Isoamyl cinnamate
■ www. Isoamyl phenylacetate
■ xxx. Isoamyl salicylate
■ yyy. Isobutyl benzoate
■ zzz. Isobutyl cinnamate
■ aaaa. Isobutyl phenylacetate
■ bbbb. Isobutyl salicylate
■ cccc. Isoeugenol
■ dddd. Isoeugenyl acetate
■ eeee. iso-Methyl-β-ionone
■ ffff. Isopropyl acetate
■ gggg. p-Isopropylacetophenone
■ hhhh. p-Isopropylbenzyl alcohol
■ iiii. 2-Isopropylphenol
■ jjjj. p-Isopropyl phenylacetaldehyde
■ kkkk. Isopulegol
■ llll. Jasmine oil (Jasminum grandiflorum L.)
■ mmmm. Juniper oil (Juniperus communis L.)
■ nnnn. Linalyl benzoate
■ oooo. Linalyl cinnamate
■ pppp. Menthol
■ qqqq. 4-Mercapto-4-methyl-2-pentanone
■ rrrr. 4-Methoxy-2-methyl-2-butanethiol
■ ssss. 2-Methoxy-4-methylphenol
■ tttt. 4-(p-Methoxyphenyl)-2-butanone
■ uuuu. 2-Methoxy-4-vinylphenol
■ vvvv. Methyl N-acetylanthranilate
■ wwww. Methyl anisate
■ xxxx. Methylbenzyl acetate (mixed o,m,p)
■ yyyy. α-Methylbenzyl propionate
■ zzzz. 3-Methyl-2-butenyl benzoate
■ aaaaa. 3-Methylindole
■ bbbbb. Methyl-α-ionone
■ ccccc. Methyl-β-ionone
■ ddddd. Methyl o-methoxybenzoate
■ eeeee. Methyl 3-methylthiopropionate
■ fffff. β-Methylphenethyl alcohol
■ ggggg. Methyl phenylacetate
■ hhhhh. 2-Methyl-4-phenyl-2-butyl acetate
■ iiiii. Methyl n-propyl ketone
■ jjjjj. Methyl sulfide
■ kkkkk. Neroli bigarde oil (Citrus aurantium L.)
■ lllll. 1-Octen-3-yl acetate
■ mmmmm. Oil of Bergamot
■ nnnnn. Oil of camphor
■ ooooo. Oil of orange
■ ppppp. Oils, Fir
■ qqqqq. Oils, mimosa
■ rrrrr. Oils, peppermint
■ sssss. Oils, spruce
■ ttttt. Oils, thyme
■ uuuuu. Orris absolute (Iris pallida)
■ vvvvv. Pepper, black, oil (Piper nigrum L.)
■ wwwww. peppermint (Mentha piperita) ext.
■ xxxxx. α-Phellandrene
■ yyyyy. Phenethyl butyrate
■ zzzzz. Phenethyl cinnamate
■ aaaaaa. Phenethyl formate
■ bbbbbb. Phenethyl hexanoate
■ cccccc. Phenethyl propionate
■ dddddd. Phenethyl salicylate
■ eeeeee. Phenethyl tiglate
■ ffffff. Phenol, 2,4,6-trimethyl-
■ gggggg. Phenylacetaldehyde glyceryl acetal
■ hhhhhh. Phenylacetic acid
■ iiiiii. 2-Phenylethyl 2-methylbutyrate
■ jjjjjj. 3-Phenylpropionaldehyde
■ kkkkkk. 3-Phenylpropionic acid
■ llllll. 3-Phenylpropyl acetate
■ mmmmmm. 3-Phenylpropyl cinnamate
■ nnnnnn. pine needle oil
■ oooooo. Pine scotch oil (Pinus sylvestris L.)
■ pppppp. Propenylguaethol
■ qqqqqq. Propyl phenethyl acetal
■ rrrrrr. α-Propylphenethyl alcohol
■ ssssss. o-Propylphenol
■ tttttt. p-Propylphenol
■ uuuuuu. Rose absolute (Rosa spp.)
■ vvvvvv. Salicylaldehyde
■ wwwwww. Schinus molle oil (Schinus molle L.)
■ xxxxxx. Storax (Liquidambar spp.)
■ yyyyyy. Tagetes oil (Tagetes erecta L.)
■ zzzzzz. α-Terpinene
■ aaaaaaa. Tetradecanoic acid, 1-methylethyl ester
■ bbbbbbb. Thyme (Thymus Vulgaris) Oil
■ ccccccc. Tolu, balsam, gum (Myroxylon spp.)
■ ddddddd. p-Tolylacetaldehyde
■ eeeeeee. p-Tolyl acetate
■ fffffff. p-Tolyl isobutyrate
■ ggggggg. p-Tolyl 3-methylbutyrate
■ hhhhhhh. p-Tolyl octanoate
■ iiiiiii. p-Tolyl phenylacetate
■ jjjjjjj. 2-(p-Tolyl)propionaldehyde
■ kkkkkkk. 3,3,5-Trimethylcyclohexanol
■ lllllll. (Z)-β-1-(2,6,6-Trimethyl-1-cyclohexen-1-yl)-2-buten-1-one; (2E)-1-(2,6,6-Trimethyl-1-cyclohexen-1-yl)-2-buten-1-one
■ mmmmmmm. 2,3,6-Trimethylphenol
■ nnnnnnn. 4,7,7-Trimethyl-6-thiabicyclo[3.2.1]octane
■ ooooooo. Turpentine, oil
■ ppppppp. 1,3,5-Undecatriene
■ qqqqqqq. Valencene
■ rrrrrrr. Vanilla (Vanilla spp.)
■ sssssss. Vanilla extract (Vanilla spp.)
■ ttttttt. Vanilla tahitensis, ext.
■ uuuuuuu. Wintergreen oil
■ vvvvvvv. 2,5-Xylenol
■ wwwwwww. 2,6-Xylenol
■ xxxxxxx. 3,4-Xylenol
■ yyyyyyy. Zingerone

The additions read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Pesticide chemical	CAS Reg. No.	Limits
* * *	*	* * *
Acetanisole	100–06–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Allspice oil (*Pimenta officinalis* Lindl.)	8006–77–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
p-Anisyl acetate	104–21–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Anisyl formate	122–91–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Anisyl propionate	7549–33–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Balsam oil, Peru (*Myroxylon pereirae* Klotzsch)	8007–00–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Benzaldehyde, methyl-	1334–78–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Benzene, 1,2-dimethoxy-	91–16–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Benzene, 2-methoxy-4-methyl-1-(1-methylethyl)-	1076–56–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Benzeneacetaldehyde	122–78–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Benzoic acid	65–85–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
Benzoin gum, Sumatra	9000–05–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Benzyl acetate	140–11–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
Benzyl benzoate	120–51–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Benzyl cinnamate	103–41–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Benzyl formate	104–57–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Benzyl isovalerate	103–38–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Benzyl phenylacetate	102–16–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Benzyl salicylate	118–58–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Benzyl trans-2-methyl-2-butenoate	37526–88–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Bisabolene	495–62–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Borneol	507–70–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
endo-Bornyl acetate	76–49–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
3-Buten-2-one, 4-(2,6,6-trimethyl-1-cyclohexen-1-yl)-	14901–07–6; 79–77–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Butyl sulfide	544–40–1	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
* * *	*	* * *
Cadinene	29350–73–0; 523–47–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Camphene	79–92–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Cananga oil	68606–83–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
δ-3-Carene	13466–78–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Carvyl acetate	97–42–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Cassia bark oil	8007–80–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Cinnamic acid; trans-Cinnamic acid	621–82–9; 140–10–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Cinnamon leaf oil	84649–98–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Cinnamyl acetate	103–54–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Cinnamyl benzoate	5320–75–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
Cinnamyl cinnamate	122–69–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
Cinnamyl formate	104–65–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
Cinnamyl isobutyrate	103–59–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Cinnamyl propionate	103–56–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Citrus, ext.	94266–47–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Cloves (*Eugenia* spp.)	84961–50–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Cornmint oil	68917–18–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Currant buds black absolute (*Ribes nigrum* L.)	68606–81–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Cyclohexadiene, methyl-	30640–46–1; 1888–90–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
1-Cyclohexylethanol	1193–81–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
m-Dimethoxybenzene	151–10–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
p-Dimethoxybenzene	150–78–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
2,6-Dimethoxyphenol	91–10–1	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
* * *	*	* * *
2,6-Dimethyl-4-heptanol	108–82–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
3,7-Dimethyl-1,3,6-octatriene	13877–91–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
p,α-Dimethylstyrene	1195–32–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Ethyl anthranilate	87–25–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
4-Ethylbenzaldehyde	4748–78–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Ethyl benzoylacetate	94–02–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Ethyl cinnamate	103–36–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
4-Ethylguaiacol	2785–89–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
p-Ethylphenol	123–07–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Ethyl phenylacetate	101–97–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Ethyl 3-phenylpropionate	2021–28–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Eugenyl acetate	93–28–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
α-Farnesene	125037–13–0; 502–61–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Geranyl benzoate	94–48–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Geranyl phenylacetate	102–22–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Guaiacol	90–05–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Guaiene	88–84–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2-Heptanol	543–49–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
cis-3-Hexenyl benzoate	25152–85–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
5-(cis-3-Hexenyl)dihydro-5-methyl-2(3H)furanone	70851–61–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Hexyl benzoate	6789–88–4	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
* * *	*	* * *
α-Ionone	127–41–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
γ-Ionone	79–76–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
α-Irone	79–69–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Isoamyl benzoate	94–46–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Isoamyl cinnamate	7779–65–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Isoamyl phenylacetate	102–19–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Isoamyl salicylate	87–20–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Isobutyl benzoate	120–50–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Isobutyl cinnamate	122–67–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Isobutyl phenylacetate	102–13–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
Isobutyl salicylate	87–19–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Isoeugenol	97–54–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Isoeugenyl acetate	93–29–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
iso-Methyl-β-ionone	79–89–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
Isopropyl acetate	108–21–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
p-Isopropylacetophenone	645–13–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
p-Isopropylbenzyl alcohol	536–60–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2-Isopropylphenol	88–69–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
p-Isopropyl phenylacetaldehyde	4395–92–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
Isopulegol	89–79–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Jasmine oil (*Jasminum grandiflorum* L.)	8022–96–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
Juniper oil (*Juniperus communis* L.)	8002–68–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Linalyl benzoate	126–64–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Linalyl cinnamate	78–37–5	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
* * *	*	* * *
Menthol	15356–70–4; 89–78–1; 1490–04–6.	When ready for use, the end-use concentration is not to exceed 100 ppm.
4-Mercapto-4-methyl-2-pentanone	19872–52–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
4-Methoxy-2-methyl-2-butanethiol	94087–83–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
2-Methoxy-4-methylphenol	93–51–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
4-(p-Methoxyphenyl)-2-butanone	104–20–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2-Methoxy-4-vinylphenol	7786–61–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Methyl N-acetylanthranilate	2719–08–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Methyl anisate	121–98–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Methylbenzyl acetate (mixed o,m,p)	360676–70–1; 2216–45–7; 17373–93–2.	When ready for use, the end-use concentration is not to exceed 100 ppm.
α-Methylbenzyl propionate	120–45–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
3-Methyl-2-butenyl benzoate	5205–11–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
3-Methylindole	83–34–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Methyl-α-ionone	127–42–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
Methyl-β-ionone	127–43–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Methyl o-methoxybenzoate	606–45–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Methyl 3-methylthiopropionate	13532–18–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
β-Methylphenethyl alcohol	1123–85–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Methyl phenylacetate	101–41–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
2-Methyl-4-phenyl-2-butyl acetate	103–07–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Methyl n-propyl ketone	107–87–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Methyl sulfide	75–18–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Neroli bigarde oil (*Citrus aurantium* L.)	8016–38–4	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
* * *	*	* * *
1-Octen-3-yl acetate	2442–10–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oil of Bergamot	8007–75–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oil of camphor	8008–51–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Oil of orange	8008–57–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Oils, Fir	8021–29–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Oils, mimosa	8031–03–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Oils, peppermint	8006–90–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oils, spruce	8008–80–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Oils, thyme	8007–46–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Orris absolute (*Iris pallida*)	8002–73–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Pepper, black, oil (*Piper nigrum* L.)	8006–82–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
peppermint (*Mentha piperita*) ext.	84082–70–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
α-Phellandrene	99–83–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Phenethyl butyrate	103–52–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
Phenethyl cinnamate	103–53–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Phenethyl formate	104–62–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Phenethyl hexanoate	6290–37–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Phenethyl propionate	122–70–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Phenethyl salicylate	87–22–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Phenethyl tiglate	55719–85–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Phenol, 2,4,6-trimethyl-	527–60–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Phenylacetaldehyde glyceryl acetal	29895–73–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
Phenylacetic acid	103–82–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2-phenylethyl 2-methylbutyrate	24817–51–4	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
3-Phenylpropionaldehyde	104–53–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
3-Phenylpropionic acid	501–52–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
3-Phenylpropyl acetate	122–72–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
3-Phenylpropyl cinnamate	122–68–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
pine needle oil	8000–26–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Pine scotch oil (*Pinus sylvestris* L.)	8023–99–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Propenylguaethol	94–86–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Propyl phenethyl acetal	7493–57–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
α-Propylphenethyl alcohol	705–73–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
o-Propylphenol	644–35–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
p-Propylphenol	645–56–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Rose absolute (*Rosa* spp.)	8007–01–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
Salicylaldehyde	90–02–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Schinus molle oil (*Schinus molle* L.)	68917–52–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Storax (*Liquidambar* spp.)	8046–19–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Tagetes oil (*Tagetes erecta* L.)	8016–84–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
α-Terpinene	99–86–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Tetradecanoic acid, 1-methylethyl ester	110–27–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Thyme (*Thymus Vulgaris*) Oil	84929–51–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Tolu, balsam, gum (*Myroxylon* spp.)	9000–64–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
p-Tolylacetaldehyde	104–09–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
p-Tolyl acetate	140–39–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
p-Tolyl isobutyrate	103–93–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
p-Tolyl 3-methylbutyrate	55066–56–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
p-Tolyl octanoate	59558–23–5	When ready for use, the end-use concentration is not to exceed 100 ppm.

TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
p-Tolyl phenylacetate	101–94–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
2-(p-Tolyl)propionaldehyde	99–72–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
3,3,5-Trimethylcyclohexanol	116–02–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
(Z)-β-1-(2,6,6-Trimethyl-1-cyclohexen-1-yl)-2-buten-1-one; (2E)-1-(2,6,6-Trimethyl-1-cyclohexen-1-yl)-2-buten-1-one.	35044–68–9; 23726–92–3; 23726–91–2.	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2,3,6-Trimethylphenol	2416–94–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
4,7,7-Trimethyl-6-thiabicyclo[3.2.1]octane	68398–18–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Turpentine, oil	8006–64–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
1,3,5-Undecatriene	16356–11–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Valencene	4630–07–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Vanilla (*Vanilla* spp.)	8024–06–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
Vanilla extract (*Vanilla* spp.)	84650–63–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Vanilla tahitensis, ext.	94167–14–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Wintergreen oil	68917–75–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2,5-Xylenol	95–87–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
2,6-Xylenol	576–26–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
3,4-Xylenol	95–65–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Zingerone	122–48–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *

* * * * *

[FR Doc. 2024–04372 Filed 2–29–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 02–278, 21–402, FCC 23–21; FR ID 203992]

Targeting and Eliminating Unlawful Text Messages, Implementation of the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule and announcement of compliance date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved the information collection associated with the rule adopted in the *Text Blocking Report and Order* requiring mobile wireless providers to block texts purporting to be from North American Numbering Plan (NANP) numbers on a reasonable Do-Not-Originate (DNO) list which include numbers that purport to be from invalid, unallocated, or unused numbers, and NANP numbers for which the subscriber to the number has requested that texts purporting to originate from that number be blocked. This document is consistent with the *Text Blocking Report and Order,* FCC 23–21, which states the Commission will publish a document in the **Federal Register** announcing a compliance date for the rule section and revise the rule accordingly.

DATES: This final rule is effective September 3, 2024. Compliance with 47 CFR 64.1200(p), is required as of September 3, 2024.

FOR FURTHER INFORMATION CONTACT: Mika Savir, Attorney Advisor, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (202) 418–0384 or *mika.savir@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the information collection requirement in 47 CFR 64.1200(p) on February 12, 2024. The rule was adopted in the *Text Blocking Report and Order,* FCC 23–21, 88 FR 21497, April 11, 2023. The Commission publishes this document as an announcement of the compliance date of the rules.

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 3–317, 45 L Street NE, Washington, DC 20554, regarding OMB Control Number 3060–1322. Please include the applicable OMB Control Number in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

In addition, this document removes 47 CFR 64.1200(q), which advised that compliance with the new rules would not be required until 64.1200(q) is removed or the Commission announces a compliance date.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on February 12, 2024, for the information collection requirement contained in 47 CFR 64.1200(p). Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number for the information collection requirement in 47 CFR 64.1200(p) is 3060–1322.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1322.

OMB Approval Date: February 12, 2024.

OMB Expiration Date: February 28, 2027.

Title: Targeting and Eliminating Unlawful Text Messages, Implementation of the Telephone Consumer Protection Act of 1991.

Form Number: N/A.

Respondents: Business or other for profit entities, and state, local or tribal governments.

Number of Respondents and Responses: 2,893 respondents; 34,716 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information is contained in sections 4(i), 4(j), 154(i), 154(j), 227, 301, 303, 307, and 316.

Total Annual Burden: 34,716 hours.

Total Annual Cost: No cost.

Needs and Uses: Text message-based scams can include links to well-designed phishing websites that appear identical to the website of a legitimate company and can fool a victim into providing personal or financial information. Texted links can also load unwanted software onto a device, including malware that steals passwords, credentials, or other personal information. The FCC is therefore requiring all mobile wireless providers to block certain text messages that are highly likely to be illegal.

In the *Text Blocking Report and Order,* 88 FR 21497, April 11, 2023, the FCC is requiring mobile wireless providers to block certain text messages that are highly likely to be illegal. The Commission is requiring mobile wireless providers to block—at the network level—texts purporting to be from NANP numbers on a reasonable DNO list, which include numbers that purport to be from invalid, unallocated, or unused numbers, and NANP numbers for which the subscriber to the number has requested that texts purporting to originate from that number be blocked. These are texts that no reasonable consumer would wish to receive because they are highly likely to be illegal.

The FCC is also ensuring that any erroneous blocking can be quickly remedied by requiring mobile wireless providers and other entities to maintain a point of contact for texters to report erroneously blocked texts.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154,201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

§ 64.1200 [Amended]

■ 2. Amend § 64.1200 by removing and reserving paragraph (q).

[FR Doc. 2024–03957 Filed 2–29–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 231010–0243]

RIN 0648–BL34

Pacific Island Fisheries; Modification of Seabird Interaction Mitigation Measures in the Hawaii Deep-Set Longline Fishery

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

ACTION: Final rule.

SUMMARY: In this final rule, NMFS modifies its seabird interaction mitigation measures to require federally permitted Hawaii deep-set longline vessels that set fishing gear from the stern to use a tori line (*i.e.,* bird scaring streamer) in place of the currently required thawed, blue-dyed bait and strategic offal (*i.e.,* fish, fish parts, or spent bait) discharge when fishing above latitude (lat.) 23° N. This action is expected to improve the overall efficacy and operational practicality of required seabird mitigation measures by reducing seabird bycatch and creating operational and administrative efficiency for fishermen and NMFS.

DATES: The final rule is effective April 1, 2024.

ADDRESSES: Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific are available from the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, telephone 808–522–8220, fax 808–522–8226, or *https://www.wpcouncil.org.*

Copies of the environmental assessment and other supporting documents for this action are available at *https://www.regulations.gov,* or from the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, 808–522–8220, or *https://www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Lynn Rassel, Pacific Islands Regional Office (PIRO) Sustainable Fisheries, 808–725–5036.

SUPPLEMENTARY INFORMATION: NMFS and the Western Pacific Fishery Management Council (Council) manage the Hawaii deep-set longline fishery under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). The implementing Federal regulations for this fishery include a suite of conservation and management requirements. This fishery occasionally catches seabirds; therefore, NMFS implemented a suite of seabird mitigation requirements in 2001 that resulted in the reduction of seabird interactions by 70–90 percent. However, seabird interactions in the Hawaii longline fisheries gradually increased in the subsequent years, with significant increases in black-footed albatross interactions in the deep-set fishery since 2015.

Cooperative research by the Council, the Hawaii Longline Association, NMFS Pacific Islands Fisheries Science Center, and NMFS Pacific Islands Regional Office (PIRO) in 2019–2021 demonstrated that when tori lines are employed in lieu of blue-dyed bait and strategic offal discharge on deep-set longline vessels that set from the stern, albatross making attempts to eat the bait off hooks are 1.5 times less likely, contacts with the bait are 4 times less likely, and captures are 14 times less likely. Furthermore, there is inconclusive evidence that the existing strategic offal discharge requirements reduce seabird interaction risk, and the requirement is associated with heavy administrative burdens to the Pacific Islands Region Observer Program and NOAA Office of Law Enforcement. Similarly, use of blue-dyed bait is burdensome due to the amount of time required to thaw and dye the bait, thawed bait loss from hooks, vessel maintenance costs related to using vats of blue dye, and the administrative burden to monitor and enforce consistent application of blue dye.

To reduce seabird bycatch and improve operational and administrative efficiency, NMFS will require deep-set longline vessels that stern-set to employ a tori line system instead of using thawed, blue-dyed bait and strategic offal discharge when fishing north of lat. 23° N. These measures will modify the requirements implemented at 50 CFR 665.815. NMFS also will require that vessels deploy a tori line system that meets required material, length, and position specifications prior to the first hook being set. We note that this action will only modify seabird mitigation requirements for the Hawaii deep-set fishery; however, research on mitigation measures is currently underway in the Hawaii shallow-set fishery.

All Hawaii longline vessels will continue to be required to follow other existing seabird handling and release requirements at 50 CFR 665.815(b) and (c) to maximize the chances of post-release survival of seabirds that are caught alive, and to be certified for the completion of an annual protected species workshop conducted by NMFS (50 CFR 665.814). All other measures applicable to longline fisheries under the FEP will remain unchanged. This rule and related tori line design guidelines are consistent with seabird mitigation requirements set forth by the Western and Central Pacific Fisheries Commission and the Inter-American Tropical Tuna Commission (see *https://www.iattc.org/PDFFiles/Resolutions/IATTC/_English/C-11-02-Active_Seabirds.pdf* and *www.wcpfc.int/doc/wcpfc15–2018-dp16/seabird-interaction-mitigation-amendment-cmm-2017–06*).

The rule will also revise 50 CFR 665.802 to clarify prohibitions for vessels with Hawaii longline limited access permits. Specifically, the rule will improve descriptions of which vessels are subject to the prohibitions. The rule will also correct the omission of a prohibition for side-setting (*i.e.,* setting the mainline from the port or starboard side of the vessel at least one meter from the stern) without a bird curtain and weighted branch lines.

You may find additional background information on this action in the preamble to the proposed rule published on October 17, 2023 (88 FR 71523).

Comments and Responses

On October 17, 2023, NMFS published a proposed rule, an Environmental Assessment (EA), and Regulatory Impact Review (RIR) for public comment (88 FR 71523). The comment period ended on November 16, 2023. NMFS received a comment letter from one nonprofit organization, the American Bird Conservancy (ABC). In general, ABC supported the proposed rule. There were no comments directed at analyses presented in the EA or the RIR. We summarize and respond to ABC's comments here.

Comment 1: ABC expressed support for the proposed rule, specifically the use of tori lines in place of the currently required thawed, blue-dyed bait and strategic offal discharge when fishing above lat. 23° N, and the housekeeping correction to reinstate the prohibition for side setting without a bird curtain.

Response: NMFS agrees and will continue to sustainably manage and regulate Federal fisheries to minimize bycatch, bycatch mortality, and interactions with protected species, including seabirds, consistent with applicable law.

Comment 2: ABC expressed support of a requirement to prohibit offal discharge during setting operations and therefore a preference for Alternative 3 in the EA which includes a modification of, rather that the removal of, the offal discharge requirement to an offal management requirement.

Response: The main difference between Alternatives 2 and 3 is whether the updated offal management measure would be implemented through a non-regulatory best practices annual training (Alternative 2) or a regulatory requirement (Alternative 3). As described in detail in EA section 4.2.2, the Council recommended Alternative 2 because it determined that fishing operations in the deep-set longline fishery are already in line with best practices for offal management because offal is not generated during the set. Offal would typically be generated and discharged in the deep-set longline fishery during the haul, and would not be saved for discharge during the set in the absence of the existing strategic offal discharge requirement. Under Alternative 2, fishery participants are not likely to retain offal and spent bait from hauling operations, so there would be no offal or spent bait available during setting operations to discharge. Even without a requirement, offal discharge during setting operations would be an atypical occurrence, and it is not expected to appreciably increase seabird interactions.

Furthermore, regulating best practices under Alternative 3 is associated with an increased administrative burden to monitor and enforce the regulation. Under Alternative 2, best practices will be taught in the protected species workshop, which is required annually for all deep-set longline vessel owners and captains. NMFS will be able to update and adapt the best practices training in accordance with the best scientific information available, in a manner that is more efficient and responsive to evolving science than changing a regulatory requirement. In this way, NMFS will be able to disseminate best practices to the fisheries' participants with less administrative burden and in a timelier manner than through the regulatory process.

This rule as described in EA Alternative 2, achieves the objective by reducing seabird interactions with the fishery while minimizing unnecessary regulation.

Comment 3: ABC recommended encouraging the use of tori lines in the deep-set longline fishery south of lat. 23° N for the sake of providing international leadership.

Response: Less than 14 percent of observed seabird interactions have occurred in the deep-set longline fishery south of lat. 23° N and NMFS has determined the risk to seabirds south of lat. 23° N to be low. However, the rule does not prohibit fishers from also using tori lines when they are fishing south of lat. 23° N. NMFS can encourage fishers to use tori lines whenever seabirds are present, regardless of latitude, as a best practice in the protected species workshop training required annually for fishers.

Comment 4: ABC encouraged NMFS to request more appropriations for the fisheries observer program to increase coverage to beyond 20 percent in order to better monitor compliance of seabird mitigation requirements.

Response: On October 1, 2023, NMFS changed observer coverage in the Hawaii deep-set longline fishery from 20 to 15 percent due to increased program costs and is evaluating options to manage observer efforts moving forward, including assessing alternative long-term options—like electronic technologies—to supplement monitoring and collecting fishery data.

Comment 5: ABC provided two more recommendations, which are related to seabirds and the rulemaking process but are not directly related to the subject rule. These recommendations include hastening the rulemaking process to implement new seabird mitigation methods more expeditiously in the shallow set longline fishery and advocating for NMFS's continued support for the Agreement for the Conservation of Albatrosses and Petrels (ACAP).

Response: NMFS strives for expeditious rulemaking, and adheres to statutory deadlines specified in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law. Tori line research is currently being conducted in the shallow set longline fishery under an experimental fishing permit issued by NMFS. The results of this research will be presented to the Council and NMFS after the conclusion of the project. NMFS believes that time spent on the research and development of new measures will improve the overall quality and outcome of such measures. We continue to support ACAP.

Changes From the Proposed Rule

The final rule contains no changes from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS received no comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule does not contain a collection-of-information requirement and thus requires no review under the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 665

Fisheries, Fishing, Hawaii, Longline, Seabird mitigation, Pacific Islands, Western Pacific.

Dated: February 26, 2024.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Amend § 665.802 by revising paragraph (z), adding paragraph (ll), and revising paragraphs (mm) through (qq) to read as follows:

§ 665.802 Prohibitions.

* * * * *

(z) Fail to fish in accordance with the seabird take mitigation techniques set forth at § 665.815(a) when operating a

vessel registered for use under a Hawaii longline limited access permit.

* * * * *

(ll) Fail to use weighted branch lines or a bird curtain that meets the specifications at § 665.815(a)(1)(i) through (vii) when operating a side-setting vessel that is registered for use under a Hawaii longline limited access permit, when making deep-sets or shallow-sets north of lat. 23° N, or shallow-sets south of lat. 23° N in violation of § 665.815(a)(1).

(mm) Fail to use a line shooter with weighted branch lines to set the main longline, and fail to use a tori line system prior to the first hook being set that meets the specifications of § 665.815(a)(3)(i)(A) through (E) when operating a stern-setting vessel that is registered for use under a Hawaii longline limited access permit and equipped with monofilament main longline, when making deep-sets north of lat. 23° N in violation of § 665.815(a)(3).

(nn) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use under a Hawaii longline limited access permit north of lat. 23° N, in violation of § 665.815(a)(4).

(oo) Fail to maintain and use blue dye to prepare thawed bait when operating a stern-setting vessel registered for use under a Hawaii longline limited access permit when making shallow-sets, in violation of § 665.815(a)(2)(vi) and (vii).

(pp) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a stern-setting vessel registered for use under a Hawaii longline limited access permit when making shallow-sets, in violation of § 665.815(a)(2)(i) through (iv).

(qq) Fail to begin the deployment of longline gear at least 1 hour after local sunset or fail to complete the setting process before local sunrise from a stern-setting vessel registered for use under a Hawaii longline limited access permit while shallow-setting, in violation of § 665.815(a)(2)(v).

* * * * *

■ 3. Amend § 665.815 by revising paragraphs (a) introductory text, (a)(2) introductory text, (a)(2)(v) and (viii), and (a)(3) and (4) to read as follows:

§ 665.815 Pelagic longline seabird mitigation measures.

(a) *Seabird mitigation techniques.* When deep-setting or shallow-setting north of lat. 23° N or shallow-setting south of lat. 23° N, owners and operators of vessels registered for use under a Hawaii longline limited access permit, must either side-set according to paragraph (a)(1) of this section, or fish in accordance with paragraphs (a)(2) through (4) of this section, as applicable.

* * * * *

(2) *Alternative to side-setting when shallow-setting.* Owners and operators of vessels engaged in shallow-setting that do not side-set must do the following:

* * * * *

(v) Begin the deployment of longline gear at least 1 hour after local sunset and complete the deployment no later than local sunrise, using only the minimum vessel lights to conform with navigation rules and best safety practices;

* * * * *

(viii) Follow the requirements in paragraph (a)(4) of this section, as applicable.

(3) *Alternative to side-setting when deep-setting.* Owners and operators of vessels engaged in deep-setting using a monofilament main longline north of lat. 23° N that do not side-set must do the following:

(i) Employ a tori line system, prior to the first hook being set, that meets the following specifications:

(A) *Length and material.* The tori line must have an aerial section with a minimum length of 50 m (164 ft) and be made of ultra-high molecular weight polyethylene, or other NMFS-approved material that is light-weight, water resistant, low stretch, and floats in water. The tori line must have a drag section made of a 6 millimeters or larger braided material that is water resistant and floats in water. Monofilament nylon is prohibited for use in the aerial or drag sections of the tori line. The tori line must have a minimum total length of 100 m (328 ft).

(B) *Streamer configuration.* The aerial section of the tori line must have light-weight material (hereafter referred to as streamers) that are attached to the aerial section at intervals less than 1 m (3.3 ft) apart. Each streamer must have a length of at least 30 cm (11.8 in) from its attachment point to the tori line so that it hangs and moves freely/flutters in the wind. Where a single streamer is either threaded through or tied to the tori line, each length must measure at least 30 cm (11.8 in). Streamers are not required for the last 20 m (65.6 ft) of the aerial section to minimize entanglements with buoys and fishing gear.

(C) *Number.* Two tori lines meeting the specifications in paragraphs (a)(3)(i)(A) and (B) of this section must be present on the vessel at the start of every trip.

(D) *Attachment point and material.* The aerial section of the tori line must be attached to the vessel or a fixed structure on the vessel made of rigid material. A weak link must be placed between the tori line and the point of attachment so that the tori line will break away from the point of attachment if gear entanglement creates tension on the tori line. The attachment point must have a minimum height of 5 m (16.4 ft) above the water when the attachment point is located within 2 m (6.6 ft) of the vessel stern. When the attachment point is more than 2 m (6.6 ft) from the stern, the attachment point height must be increased by 0.5 m (1.6 ft) for every 5 m (16.4 ft) distance from the stern.

(E) *Attachment point height exemption.* If the structure used to attach the tori line breaks during a trip, the operator may use an alternative attachment point at the highest possible point on the vessel that is lower than the height specified in paragraph (a)(3)(i)(D) of this section to continue fishing north of lat. 23° N. The exemption is only valid during the trip in which the structure broke.

(ii) Employ a line shooter.

(iii) Attach a weight of at least 45 g (1.6 oz) to each branch line within 1 m (3.3 ft) of the hook.

(4) *Basket-style longline gear requirement.* When using basket-style longline gear north of lat. 23° N, owners and operators of vessels that do not side-set must ensure that the main longline is deployed slack to maximize its sink rate.

* * * * *

[FR Doc. 2024–04236 Filed 2–29–24; 8:45 am]

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Proposed Rules

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0317; Airspace Docket No. 24–AGL–7]

RIN 2120–AA66

Establishment of Class E Airspace; Webster, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Webster, SD. The FAA is proposing this action due to the development of new public instrument procedures at The Sigurd Anderson Airport, Webster, SD, and to support instrument flight rule (IFR) operations.

DATES: Comments must be received on or before April 15, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–0317 and Airspace Docket No. 24–AGL–7 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at The Sigurd Anderson Airport, Webster, SD, to support IFR operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice (DOT/ALL–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes

to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing to amend 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile radius of The Sigurd Anderson Airport, Webster, SD.

The FAA is proposing this action due to the development of new public instrument procedures at this airport and to support IFR operations.

Regulatory Notices and Analyses

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL SD E5 Webster, SD [Establish]

The Sigurd Anderson Airport, SD
(Lat 45°17′35″ N, long 94°30′49″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of The Sigurd Anderson Airport.

* * * * *

Issued in Fort Worth, Texas, on February 27, 2024.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–04317 Filed 2–29–24; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 7

[Docket No. 240227–0060]

RIN 0694–AJ56

Securing the Information and Communications Technology and Services Supply Chain: Connected Vehicles

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In this advance notice of proposed rulemaking (ANPRM), the Department of Commerce's (Department) Bureau of Industry and Security (BIS) seeks public comment on issues and questions related to transactions involving information and communications technology and services (ICTS) that are designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign countries or foreign non-government persons identified in the Department's regulations, pursuant to the Executive Order (E.O.) entitled ''Securing the Information and Communications Technology and Services Supply Chain,'' and that are integral to connected vehicles (CVs), as defined herein. This ANPRM will assist BIS in determining the technologies and market participants that may be most appropriate for regulation pursuant to the E.O.

DATES: Comments must be received on or before April 30, 2024.

ADDRESSES: All comments must be submitted by one of the following methods:

- *The Federal eRulemaking Portal: https://www.regulations.gov* at docket number BIS–2024–0005.
- *Email directly to: connected vehicles@bis.doc.gov.* Include ''RIN 0694–AJ56'' in the subject line.
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. For those seeking to submit confidential business information (CBI), please clearly mark such submissions as CBI and submit by email, as instructed above. Each CBI submission must also contain a summary of the CBI, clearly marked as public, in sufficient detail to permit a reasonable understanding of the substance of the information for public consumption. Such summary information will be posted on *regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Marc Coldiron, U.S. Department of Commerce, telephone: 202–482–3678. For media inquiries: Jeremy Horan, Office of Congressional and Public Affairs, Bureau of Industry and Security, U.S. Department of Commerce: *OCPA@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Authorities

On May 15, 2019, the President issued E.O. 13873, ''Securing the Information and Communications Technology and Services Supply Chain,'' pursuant to the President's authority under the Constitution and the laws of the United States, including the International Emergency Economic Powers Act (IEEPA), the National Emergencies Act (50 U.S.C. 1601, *et seq.*), and Section 301 of Title 3, United States Code. E.O. 13873 declares a national emergency regarding the ICTS supply chain, finding that ''the unrestricted acquisition or use in the United States of information and communications

technology or services designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries augments the ability of foreign adversaries to create and exploit vulnerabilities in information and communications technology or services, with potentially catastrophic effects, and thereby constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.'' The E.O. further notes that ''[t]his threat exists both in the case of individual acquisitions or uses of such technology or services, and when acquisitions or uses of such technologies are considered as a class.''

In accordance with the National Emergencies Act, the President has declared each year since E.O. 13873 was published that the national emergency continues in effect. *Continuation of the National Emergency With Respect to Securing the Information and Communications Technology and Services Supply Chain,* 85 FR 29321 (May 14, 2020); *Continuation of the National Emergency With Respect to Securing the Information and Communications Technology and Services Supply Chain,* 86 FR 26339 (May 13, 2021); *Continuation of the National Emergency With Respect to Securing the Information and Communications Technology and Services Supply Chain,* 87 FR 29645 (May 13, 2022); *Continuation of the National Emergency With Respect to Securing the Information and Communications Technology and Services Supply Chain,* 88 FR 30635 (May 11, 2023).

To address identified risks to national security from ICTS transactions, E.O. 13873 grants the Secretary of Commerce (Secretary) (in consultation with other agency heads identified in the E.O.) the authority to review and, if necessary, impose mitigation measures on or prohibit any ICTS transaction, which includes any acquisition, importation, transfer, installation, dealing in, or use of any ICTS by any person, or with respect to any property, subject to United States jurisdiction, when the transaction involves any property in which a foreign country or national has any interest. In order to require mitigation for or to prohibit an ICTS transaction or class of transactions, the Secretary, in consultation with other agency heads, must first determine that the ICTS transaction or class of transactions at issue: (1) involves ICTS designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary, which the E.O. defines as ''any foreign government or foreign non-government person engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons;'' and (2) poses:

A. an undue risk of sabotage to or subversion of the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of information and communications technology or services in the United States;

B. an undue risk of catastrophic effects on the security or resiliency of United States critical infrastructure or the digital economy of the United States; or

C. otherwise poses an unacceptable risk to the national security of the United States or the security and safety of United States persons.

These factors are collectively referred to as ''undue or unacceptable risks.''

E.O. 13873 additionally provides the Secretary with the authority to issue rules establishing criteria by which particular technologies or market participants may be categorically included in or categorically excluded from prohibitions established pursuant to the E.O. To date, the Department has not pursued or used this authority to regulate ICTS transactions on a category- or class-wide basis. Furthermore, E.O. 13873 grants the Secretary the authority to identify a mechanism and relevant factors for the negotiation of mitigation measures that would allow approval of an otherwise prohibited transaction.

II. Background

a. Purpose

Pursuant to the authority delegated to the Secretary under E.O. 13873, BIS is considering proposing rules that would prohibit certain ICTS transactions or classes of ICTS transactions by or with persons who design, develop, manufacture, or supply ICTS integral to CVs and are owned by, controlled by, or subject to the jurisdiction or direction of foreign governments or foreign non-government persons identified at 15 CFR 7.4 (hereinafter referred to as ''15 CFR 7.4 entities''). BIS is also considering proposing measures that would allow market participants to engage in otherwise prohibited transactions or classes of transactions if the undue or unacceptable risks of those ICTS transactions can be sufficiently mitigated using measures that are monitorable.

The purpose of this ANPRM is to gather information to support BIS's potential development of a rule regarding ICTS integral to CVs. In particular, BIS seeks public input on certain definitions and its assessment of how a class of transactions involving ICTS integral to CVs, when designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a 15 CFR 7.4 entity, could present undue or unacceptable risks to U.S. national security. These include risks related to threats from 15 CFR 7.4 entities, capabilities of CVs that may increase the likelihood of vulnerabilities, and consequences to U.S. persons and critical infrastructure if these vulnerabilities are exploited or intentionally inserted by 15 CFR 7.4 entities. BIS solicits input on the ICTS most integral to CVs and most vulnerable to compromise, as well as input on mechanisms to address identified risks through potential design, implementation standards and protocols, manufacturing integrity protection systems and procedures, or prohibitions.

BIS recognizes the benefits of CV technologies and does not imply through this ANPRM that technologies such as vehicle-to-everything (V2X) communications are generally unsafe for use in the United States. Indeed, these new vehicles often provide safer, more fuel-efficient travel. However, E.O. 13873 is focused on risks that ICTS transactions might present to national security. Therefore, this ANPRM, which is being issued pursuant to the authorities granted under E.O. 13873, seeks public comment on potential means to narrowly address involvement by persons owned by, controlled by, or subject to the jurisdiction or direction of 15 CFR 7.4 entities in the design, development, manufacture, or supply of ICTS integral to CVs where that involvement may create undue or unacceptable risk to U.S. national security.

Additionally, BIS seeks comment on whether to create a process for the public to request approval to engage in an otherwise prohibited transaction by demonstrating that a particular transaction adequately addresses the risk to U.S. national security. BIS encourages public feedback to help inform the rulemaking process, particularly regarding transactions where ICTS supply chains may be impacted by any proposed rule.

b. Definitions

As an initial matter, BIS is interested in receiving comments on the applicable

definition for *connected vehicle* or *CV* within the context of transactions involving ICTS incorporated into such vehicles. BIS could define a *connected vehicle* as an automotive vehicle that integrates onboard networked hardware with automotive software systems to communicate via dedicated short-range communication, cellular telecommunications connectivity, satellite communication, or other wireless spectrum connectivity with any other network or device. Such a definition would likely include automotive vehicles, whether personal or commercial, capable of global navigation satellite system (GNSS) communication for geolocation; communication with intelligent transportation systems; remote access or control; wireless software or firmware updates; or on-device roadside assistance.

CVs also integrate hardware that enables connectivity within the vehicle and/or external connectivity with devices, networks, applications, and services outside the vehicle. CV safety applications are designed to increase situational awareness and reduce traffic accidents through vehicle-to-vehicle (V2V), vehicle-to-infrastructure (V2I), and increasingly, V2X communications, as contemplated in a series of Department of Transportation workshops focusing on V2X communications titled ''Saving Lives with Connectivity.'' *See* Bill Canis, Cong. Research Serv., R46398, *Motor Vehicle Safety: Issues for Congress* 8 (2021), *https://sgp.fas.org/crs/misc/R46398.pdf;* U.S. Dep't of Transp., ITS V2X Communications Summit (2023), *https://www.its.dot.gov/research_areas/emerging_tech/htm/ITS_V2X_CommunicationSummit.htm.*

BIS arrived at this definition by reviewing existing definitions for connected vehicles from trade associations and leading research publications including the Connected Vehicle Reference Implementation Architecture, U.S. Department of Transportation's Intelligent Transportation Systems Joint Program Office, Institute of Electrical and Electronics Engineers research, and Society of Automotive Engineers standards.

Various terms exist across industry and the U.S. Government to refer to vehicles that exhibit the connected features explained above. In addition to input on the term *connected vehicle,* BIS is seeking comment on alternative terminology that might better correspond to the definition of *connected vehicle* discussed above. Such terminology could include ''networked vehicles,'' ''intelligent connected vehicles,'' ''software-defined vehicles,'' or ''connected autonomous vehicles.''

This ANPRM seeks comment on the definitions to use for a rule regarding transactions involving ICTS integral to CVs, and specifically:

1. In what ways, if any, should BIS elaborate on or amend the potential definition of *connected vehicle* stated above? If amended, how will the revised definition enable BIS to better address national security risks arising from classes of transactions involving ICTS integral to CVs?

2. Is the term *connected vehicles* broad enough to include autonomous vehicles and related equipment, electric vehicles, or other alternative power sources and related technologies? Does a better term exist to describe the broader scope?

3. Are there other commonly used definitions for CVs that BIS should consider when defining a class of ICTS transactions, including definitions from industry, civil society, and foreign entities? If so, why would those definitions be more appropriate for the purposes of a rule?

c. Risks Associated With Connected Vehicles

The automotive industry is constantly undergoing innovation and change, and as communications and broadband technology advance, so do the technologies used in automobiles. Particularly relevant for the purposes of this ANPRM, new technology has fueled a rise in interconnectivity and autonomous capabilities in new vehicles. An automobile's value is no longer determined only by the engine, steering system, and other traditional automotive parts. Increasingly, an automobile is a compilation of on-board computers; sensors; cameras; batteries; and various other categories of ICTS software or hardware tied together through automotive software systems. Over time, vehicle connections to the internet will evolve even further and new communication technology will advance vehicle capabilities. These technological advances will continue to rely on significant data collection not only about the vehicle and its myriad components, but also the driver, the occupants, the vehicle's surroundings, and nearby infrastructure. Moreover, CVs allow for information to be gathered and shared to address both individual and societal transportation needs. These technologies may expose the vehicles, and the sectors they support, to new cyber-enabled attack vectors and vulnerabilities, with the potential to create novel and potentially profound risks to national security and public safety. Cyber-enabled vulnerabilities can be exacerbated if the ICTS integral to CVs is designed, developed, manufactured, or supplied, by persons owned by, controlled by, or subject to the jurisdiction or direction of a 15 CFR 7.4 entity.

i. Threat From 15 CFR 7.4 Entities

E.O. 13873 defines the term ''foreign adversary'' to mean any foreign government or foreign non-government person engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of U.S. persons. In the rules implementing the E.O. at 15 CFR 7.4(a), the Secretary has identified the following as foreign adversaries: the People's Republic of China, including the Hong Kong Special Administrative Region (PRC); Republic of Cuba; Islamic Republic of Iran; Democratic People's Republic of Korea; Russian Federation; and Venezuelan politician Nicolás Maduro (Maduro Regime).

The incorporation of ICTS products and services used in the United States from persons owned by, controlled by, or subject to the jurisdiction or direction of 15 CFR 7.4 entities' can offer a direct entry point to sensitive U.S. technology and data and bypass measures intended to protect U.S. persons' safety and security. This may allow actors with insider access to gain entry to the systems the ICTS connects to and ultimately engage in malicious cyber activity. Consequently, this exploitation may result in undue risks to ICTS and critical infrastructure in the United States and unacceptable risks to national security.

The PRC presents a particularly acute and persistent threat to the United States ICTS supply chain. According to the Office of the Director of National Intelligence, the PRC likely represents the broadest, most active, and persistent cyber espionage threat to U.S. Government and private-sector networks. *See* Off. Of the Director of Nat'l Intelligence, *Annual Threat Assessment of the U.S. Intelligence Community* 10 (2023), *https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-Unclassified-Report.pdf.* The PRC is almost certainly capable of launching cyber-attacks that could disrupt critical infrastructure services within the United States and has conducted cyber espionage operations that have compromised telecommunications firms, providers of managed services, and broadly used software. *Id.* At 10. In short, the PRC has

engaged in a pattern of hacking and cyber intrusion that demonstrates the PRC's intent to compromise and exploit U.S. ICTS supply chains and critical infrastructure, threatening U.S. national security.

The PRC's legal structure also gives broad authority to the state to co-opt private companies to pursue its objectives. A host of laws give the PRC government the authority to compel companies located in the PRC, including automakers and their suppliers, to cooperate with PRC intelligence and security services. The PRC's 2021 Data Security Law, for example, makes all private data available to the PRC state when it is needed for ''national security.'' *See* National People's Congress, *Data Security Law of the People's Republic of China,* Art. 35, *http://www.npc.gov.cn/englishnpc/c2759/c23934/202112/t20211209_385109.html.* The PRC's 2017 National Intelligence Law imposes affirmative obligations on entities and persons subject to the PRC's jurisdiction to cooperate with intelligence agencies—Article 17 allows PRC intelligence officials to take control of a private organization's facilities, including its communications equipment. *See* National People's Congress, *National Intelligence Law (as amended, 2018), http://www.npc.gov.cn/npc/c2/c30834/201905/t20190521_281475.html.* The PRC's 2015 National Security Law obliges citizens and private companies to provide security and military agencies with all ''necessary support and assistance.'' *See* State Council of the People's Republic of China, *National Security Law,* Art. 77(5), *https://www.gov.cn/zhengce/2015-07/01/content_2893902.htm.* Beyond legal obligations, companies established in the PRC may be required to create internal Chinese Communist Party (CCP) committees that can exercise influence over corporate decisions. *See* National People's Congress, *Company Law of the People's Republic of China,* Art. 19, *https://www.npc.gov.cn/zgrdw/npc/xinwen/2018-11/05/content_2065671.htm.*

The combination of legal authorities and opaque CCP influence make private companies that are subject to the PRC's jurisdiction susceptible to requests from intelligence and military officials. PRC officials can compel PRC firms to provide the PRC government with data, logical access, encryption keys, and other vital technical information, as well as to install backdoors or bugs in equipment which create security flaws easily exploitable by PRC authorities. U.S. Dep't of Homeland Security, *Data Security Business Advisory: Risks and Considerations for Businesses Using Data Services and Equipment from Firms Linked to the Peoples Republic of China* 2 (2020), *https://www.dhs.gov/sites/default/files/publications/20_1222_data-security-business-advisory.pdf.* Original equipment manufacturers (OEMs) for vehicles in the PRC, due to the vast amounts of data generated by their products, are notable targets for government access. According to open-source reporting, over 200 automakers that operate in the PRC are legally obligated to transmit real-time vehicle data, including geolocation information, to government monitoring centers. *See* Erika Kinetz, *In China Your Car Could Be Talking To The Government,* Associated Press News (Nov. 29, 2018), *https://apnews.com/article/4a749a4211904784826b45e812cff4ca.* This pervasive data sharing, which provides the PRC government with detailed information on the behaviors and habits of individuals, is indicative of a broader approach to co-opting private companies—one that raises significant concerns about how the PRC government might exploit the growing presence of PRC OEMs and manufacturers of ICTS integral to CVs in foreign markets. The combination of these factors uniquely elevates BIS's concern regarding PRC participation in the ICTS supply chain for CVs in the United States.

BIS seeks to better understand the role of persons owned by, controlled by, or subject to the jurisdiction or direction of 15 CFR 7.4 entities, particularly the PRC, in the ICTS supply chain for CVs, and the leverage these entities might exert as a result. In particular, the ANPRM seeks comments on the following issues:

4. Please describe the ICTS supply chain for CVs in the United States. Particularly useful responses may include information regarding:

a. categories of ICTS, such as software or hardware, that are integral to CVs operating in the United States;

b. market leaders for each distinct phase of the supply chain for ICTS integral to CVs (such as design, development, manufacturing, or supply) including, but not limited to: OEMs, tier one, tier two, and tier three suppliers, and service providers;

c. geographic locations where software (such as the vehicle operating system), hardware (such as light detection and ranging (LiDAR) sensors), or other ICTS components integral to CVs in use in the United States are designed, developed, manufactured, or supplied;

d. involvement in any sector or sub-sector of the U.S. ICTS supply chain for CVs by persons owned by, controlled by, or subject to the jurisdiction or direction of a 15 CFR 7.4 entity; and

e. geographic locations where data from CVs in use in the United States is transmitted, stored, or analyzed.

5. Are there ICTS integral to CVs for which persons owned by, controlled by, or subject to the jurisdiction or direction of a 15 CFR 7.4 entity are sole source suppliers? To what extent do OEMs of CVs in use in the United States rely upon suppliers wholly or partially owned by a company based in or under the control of a 15 CFR 7.4 entity?

6. In what ICTS hardware or software for CVs do persons owned by, controlled by, or subject to the jurisdiction or direction of a 15 CFR 7.4 entity maintain a technological advantage over U.S. and other foreign counterparts and how may this dynamic evolve in the coming years?

7. How, and to what degree, does CV automotive software connect to GNSS systems that are designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a 15 CFR 7.4 entity? for geolocation and other functions?

8. How might a disruption to the supply of ICTS components for CVs in use in the United States, including hardware and software, from persons owned by, controlled by, or subject to the jurisdiction or direction of a 15 CFR 7.4 entity affect OEMs of CVs in use in the United States and ICTS suppliers? Where possible, please specify which disruptions to component supply would be particularly detrimental.

9. To what extent can OEMs procure alternative sources of ICTS integral to CVs that do not constitute ICTS from persons owned by, controlled by, or subject to the jurisdiction or direction of 15 CFR 7.4 entities?

10. Please describe the relationship between OEMs of CVs in use in the United States and their ICTS suppliers. Particularly useful responses may include the type of information that is shared between OEMs of CVs in use in the United States and their ICTS suppliers in the normal course of business, how this information is shared, what access or administrative privileges are typically granted, and if suppliers have any capability for remote access or ability to provide firmware or software updates.

11. What risks might be posed by aftermarket ICTS integrated onboard CVs and interfaced with vehicle systems, such as tracking devices, cameras, and wireless-enabled

diagnostic interfaces? Should aftermarket automotive systems or components be considered integral to CV operation?

12. To what extent are ICTS components of CVs designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a 15 CFR 7.4 entity present in critical infrastructure sectors? Are there instances of municipal, state, or federal funding for procurement of such 15 CFR 7.4 entities' ICTS integral to CVs for use in critical infrastructure sectors?

13. What other instances exist where persons owned by, controlled by, or subject to the jurisdiction or direction of a 15 CFR 7.4 entity, are integrated into the ICTS supply chain for CVs?

ii. Capabilities of Connected Vehicles May Increase the Likelihood of Vulnerabilities 15 CFR 7.4 Entities Could Exploit

CVs and the components that enable their functionality present opportunities for exploitation by 15 CFR 7.4 entities via insider access, which could potentially result in severe consequences to U.S. persons and critical infrastructure. Increasing the number and scope of wireless connected components in a vehicle also increases the attack surfaces through which a malicious actor can gain initial entry. As CVs gain new and different connectivity capabilities, design, implementation, and operational protocols need to be added to address new attack surfaces and maintain the confidentiality, integrity, and availability of the data that traverse any one functional system. As demonstrated in controlled environments, attack vectors can be exploited and may provide access to other functional systems within a CV. Moreover, once one subsystem has been compromised, depending on the nature of the vulnerability and the design of the vehicle network architecture, the attacker might have the ability to move laterally and eventually gain access to other functional automotive systems. While integrated functionality may provide seamless communication, comfort, and operability for the consumer, it is possible that unauthorized remote access to a particular sensor system could be escalated to vehicle systems and operations, potentially resulting in injury, loss of life, and disruption to critical infrastructure networks.

Preliminarily, BIS has identified the following capabilities associated with CVs that may increase the likelihood of vulnerabilities that 15 CFR 7.4 entities could exploit:

Data Collection: CVs rely on the collection and integration of broad and varied data to improve the vehicle's functionality and safety. This data, which can encompass vehicle-level data (*e.g.,* driver behavior, vehicle status, geolocation, biometrics, driver mobile phone data) and environmental-level data (*e.g.,* detailed mapping data, object detection, traffic patterns), are extracted through various onboard systems and sensors. The Advanced Driver-Assistance System (ADAS) of a CV, for example, typically relies on a combination of sensors—radar, LiDAR, ultrasonic, audio, and video—that are constantly collecting and processing data. CVs now collect data inside the cockpit as well. Consumer and commercial CVs increasingly incorporate driver monitoring systems (DMS) to ensure the driver remains alert and fully able to take control of the car should autonomous systems fail, and to ensure commercial truck drivers remain on schedule. More sophisticated DMS feature driver-facing cameras—including eye tracking, facial recognition, and microphones—collect potentially sensitive information about drivers and passengers. This increases the sensitivity of the data that CVs collect, potentially providing 15 CFR 7.4 entities with access to biometric information in addition to environmental data.

Connectivity: CVs are connected to and can communicate with a range of external sources, including the OEM and third-party service providers, as well as in-car devices like smart phones. In an increasing subset of vehicles, telematics systems connect the vehicle with cloud-based services to provide onboard systems with external data streams (*e.g.,* geolocation, streaming service, assistance service, emergency notification) and underlie many of a CV's core functionalities. V2X systems, when widely implemented, will support the broadcast and reception of messages that enable safety alerts and mobility advisories. Providing broadcast (radio) communication capabilities that facilitate driver assistance capabilities may open cybersecurity vectors that need to be addressed to ensure broadcast message integrity and authenticity through design, standards, implementation and manufacturing protocols, and to prevent possible message and transmission misbehavior.

Further, interconnectivity in the software or hardware components may amplify risks posed by ICTS integral to CVs that are designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a 15 CFR 7.4 entity. For example, OEMs enable communication with their vehicle after sale even when a customer does not subscribe to services, including by providing software updates and refinements, as well as by enabling or disabling subscription-based features. This access by the OEM to the CV provides numerous opportunities for 15 CFR 7.4 entities that own, control, or have the ability to exert jurisdiction or direction over the OEM, to insert vulnerabilities allowing for future backdoor attacks and other malicious behavior. Additionally, individually connected components and sensors are capable of transmitting data separately from the vehicle's broader communications suite, including receiving over the air (OTA) updates without the knowledge or consent of the vehicle owner or OEM. BIS seeks to better understand the capabilities associated with technical trends—both current and future—in CV design and the ICTS components therein. In particular, the ANPRM seeks further comment on the following:

14. What is the full scope of data collection capabilities in CVs and the aggregation and scale of data that CVs could collect on U.S persons, entities, geography, and infrastructure? Who has authorized access to, or control of, data collected by CVs?

15. What types of remote access or control do OEMs have over their CVs? Please describe what software or other mechanisms allow for such remote access or control by the OEM to occur.

16. What cybersecurity concerns may arise from linkages between sensors in CVs? To what extent can individual sensors and components communicate OTA independently from the CV's Operating System (OS)?

17. What standards, best practices, and industry norms are used to secure the interconnection between vehicles and charging infrastructure? How are battery management systems (BMS) integrated into a vehicle's automotive software systems, and how are they protected from malware?

18. How do manufacturers supplement existing cybersecurity standards and best practices such as the National Highway Traffic Safety Administration's *Cybersecurity Best Practices for the Safety of Modern Vehicles* at each step of the CV supply chain, including design, manufacturing, and operation?

a. Particularly useful responses will be specific about the types of programs and practices used such as test and verification, bug bounties, white hat programs, or end-to-end encryption to secure the link between vehicle and

server. *See* Nat'l Highway Traffic Safety Admin., *Cybersecurity Best Practices for the Safety of Modern Vehicles* (2022), *https://www.nhtsa.gov/sites/nhtsa.gov/files/2022-09/cybersecurity-best-practices-safety-modern-vehicles-2022-tag.pdf; see also* Cybersecurity and Infrastructure Security Agency, *Autonomous Ground Vehicle Security Guide: Transportation Systems Sector* (2021), *https://www.cisa.gov/resources-tools/resources/autonomous-ground-vehicle-security-guide.*

19. Please describe the automotive software development cycle. BIS is particularly interested in learning:

a. The degree to which OEMs license software, as opposed to developing it internally;

b. The extent to which software is developed outside the United States and, if so, where;

c. What measures are taken to ensure software security and integrity during the development cycle;

d. If OEMs partner or co-develop automotive software with any persons owned by, controlled by, or subject to the jurisdiction or direction of a 15 CFR 7.4 entity; and

e. The extent to which software that is embedded in hardware (*e.g.,* firmware) is subject to the development cycle described above.

20. Please describe the relationship between CV OEMs and cloud service providers (CSPs). Particularly useful responses may describe what access privileges, controls, and remote capabilities with respect to CV OEM systems are afforded to the CSP. Additionally, what are the common shared responsibility models between a CSP and a CV OEM and how are the communication and systems protected?

21. How do CV OEMs verify the bill of materials and software bill of materials as authentic for vendors and suppliers, specifically regarding OS, telematic systems, ADAS, Automated Driving Systems (ADS), satellite or cellular telecommunication systems, and BMS? If a software bill of materials is required, to what extent does it provide information regarding software vulnerabilities, and how is this information used, stored, and protected?

22. To what extent is software from vendors and suppliers tested and verified to comply with OEM requirements?

23. What vendor-vetting and supply chain security practices do OEMs employ when procuring ICTS integral to CVs?

iii. Consequences

The ability of a 15 CFR 7.4 entity to compel private companies through applicable legal frameworks, combined with the exploitation of vulnerabilities created by the increase in capabilities of the ICTS integral to CVs, has the potential to create severe and, in certain instances, catastrophic consequences for U.S. persons and critical infrastructure. Through ICTS designed, developed, manufactured, or supplied by persons subject to the ownership, control, jurisdiction, or direction of a 15 CFR 7.4 entity, the intelligence agencies of that entity could obtain access to a wide range of information from companies in the CV ICTS supply chain to exfiltrate, collect, and aggregate sensitive data on U.S. persons. These data include location, traffic patterns, audio and video recordings of the inside and outside of the car, as well as information about the driver's identity, finances, contacts, and home address, which can be collected by CVs themselves or by a passenger's mobile device connected to a CV.

In addition, backdoors embedded in a CV's software could enable a 15 CFR 7.4 entity under certain conditions to obtain control over various vehicle functions that could include the ability to disable the vehicle completely. A group of researchers were able to demonstrate a vulnerability in an OEM's Bluetooth software that allowed access to some vehicle control systems, initiating remote actions such as activating the brakes and turning the steering wheel. *See* Consumer Watchdog, *Kill Switch: Why Connected Cars Can Be Killing Machines and How to Turn Them Off* 37–40 (2019), *https://consumerwatchdog.org/sites/default/files/2019-07/KILL%20SWITCH%20%207-29-19.pdf.* A similar ability in the hands of a 15 CFR 7.4 entity that can control or direct an OEM could allow that entity to disable the controls on an individual vehicle while it was being driven or to sabotage entire fleets without having physical access to the vehicles. Finally, because of CVs' connectivity, they could be used to access multiple critical infrastructure systems with which they interact, including telecommunications networks, transportation systems, and the electrical grid. As CV technology advances, vehicles and charging infrastructure may increasingly communicate with these systems to manage traffic flows and grid load. As such, the proliferation of CVs containing vulnerable ICTS from persons owned by, controlled by, or subject to the jurisdiction or direction of a 15 CFR 7.4 entity could provide that entity with a platform for launching distributed denial of service attacks against intelligent transportation systems, satellite or cellular communications hardware, or other critical infrastructure. *See* Mohammad Ali Sayed, et al., *Electric Vehicle Attack Impact on Power Grid Operation,* 137 Int'l J. Electrical Power & Energy Sys. 107784 (2022), *https://www.sciencedirect.com/science/article/abs/pii/S0142061521010048;* Numaan Huq, et al., *Cybersecurity for Connected Cars: Exploring Risks in 5G, Cloud, and Other Connected Technologies,* Trend Micro Res. (2021), *https://documents.trendmicro.com/assets/white_papers/wp-cybersecurity-for-connected-cars-exploring-risks-in-5g-cloud-and-other-connected-technologies.pdf;* Anastasios Giannaros, et al., *Autonomous Vehicles: Sophisticated Attacks, Safety Issues, Challenges, Open Topics, Blockchain, and Future Directions,* 3 J. of Cybersecurity and Privacy 493 (2023). Given these threats, vulnerabilities, and potential consequences, BIS is considering identifying the following automotive software systems as the ICTS integral to CVs most likely to present undue or unacceptable risks if exploited by 15 CFR 7.4 entities: (i) vehicle OS; (ii) telematics systems; (iii) ADAS; (iv) ADS; (v) satellite or cellular telecommunication systems; and (vi) BMS.

As BIS considers whether and how to regulate these software systems, it seeks additional information, including:

24. Are there ICTS integral to CVs other than those identified in this ANPRM that could present material risks if they were designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction of a 15 CFR 7.4 entity? If so, please discuss how the ICTS could be exploited to pose such a risk.

25. Of the ICTS integral to CVs identified in this ANPRM, which present the greatest risk to safety or security if they are designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a 15 CFR 7.4 entity?

26. As ADS systems evolve and developers rely on cellular systems to communicate with ADS-enabled vehicles to support overall operational capability (*e.g.,* communications to a fleet management office), what should the U.S. government consider in order to support the development of this technology securely from 15 CFR 7.4 entity malign activity?

III. Additional Questions for Comment

This ANPRM seeks comment on processes and mechanisms that BIS could implement in a potential rule to authorize an otherwise prohibited ICTS

transaction with the adoption of mitigation measures.

Authorizations and Mitigations

27. In what instances would granting a temporary authorization to engage in an otherwise prohibited transaction under a proposed rule be necessary and in the interest of the United States to avoid supply chain disruptions or other unintended consequences?

28. What review criteria should BIS implement when considering an application for a temporary authorization?

29. What specific standards, mitigation measures, or cybersecurity best practices should BIS consider when evaluating the appropriateness of a requested authorization?

30. Are there any U.S. government models, such as the Office of Foreign Assets Control's sanctions programs or the Export Administration Regulations, that this program should consider emulating in granting authorizations?

Economic Impact

31. What economic impacts to U.S. businesses or the public, if any, might be associated with the regulation of ICTS integral to CVs contemplated by this ANPRM? If responding from outside the United States, what economic impacts to local businesses and the public, if any, might be associated with regulations of ICTS integral to CVs?

32. What, if any, anticompetitive effects may result from regulation of ICTS that is integral to CVs as contemplated by this ANPRM? And what, if anything, can be done to mitigate the anticompetitive effects of regulation of ICTS?

33. What types of U.S. businesses or firms (*e.g.,* small businesses) would likely be most impacted by the program contemplated in this ANPRM? If responding from outside the United States, what types of local businesses or firms (*e.g.,* small businesses) would likely be most impacted by the program contemplated in this ANPRM?

34. What actions can BIS take, or provisions could it add to any proposed regulations, to minimize potential costs borne by U.S. businesses or the public? If responding from outside the United States, what actions can BIS take, or what provisions could it add to any proposed regulations, to minimize potential costs borne by local businesses or the public?

35. What new due diligence, compliance, and recordkeeping controls will U.S. persons anticipate needing to undertake to comply with any proposed regulations regarding ICTS integral to CVs that are designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of 15 CFR 7.4 entities?

Elizabeth L.D. Cannon,

Executive Director, Office of Information and Communications Technology and Services.

[FR Doc. 2024–04382 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–33–P

FEDERAL TRADE COMMISSION

16 CFR Part 461

RIN 3084–AB71

Trade Regulation Rule on Impersonation of Government and Businesses

AGENCY: Federal Trade Commission.

ACTION: Supplemental notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (FTC or Commission) requests public comment on its proposal to amend the trade regulation rule entitled Rule on Impersonation of Government and Businesses (Impersonation Rule or Rule) to revise the title of the Rule, add a prohibition on the impersonation of individuals, and extend liability for violations of the Rule to parties who provide goods and services with knowledge or reason to know that those goods or services will be used in impersonations of the kind that are themselves unlawful under the Rule. The Commission believes these changes are necessary and such impersonation is prevalent, based on all comments it received on the Rule and other information discussed in this document. The Commission now solicits written comment, data, and arguments concerning the utility and scope of the proposed revisions to the Impersonation Rule.

DATES: Comments must be received on or before April 30, 2024.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Impersonation SNPRM, R207000'' on your comment and file your comment online at *https://www.regulations.gov*. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex I), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Claire Wack, *cwack@ftc.gov,* (202–326–2836).

SUPPLEMENTARY INFORMATION: The Commission invites interested parties to submit data, views, and arguments on the proposed amendments to the Impersonation Rule and, specifically, on the questions set forth in Section VIII of this supplementary notice of proposed rulemaking (''SNPRM''). The comment period will remain open until April 30, 2024. To the extent practicable, all comments will be available on the public record and posted at the docket for this rulemaking on *https://www.regulations.gov*. If interested parties request to present their position orally, the Commission will hold an informal hearing, as specified in section 18(c) of the FTC Act, 15 U.S.C. 57a(c). Any request for an informal hearing must be submitted as a written comment within the comment period and must include: (1) a request to make an oral submission, if desired; (2) a statement identifying the person's interests in the proceeding; and (3) any proposals to add disputed issues of material fact that need to be resolved during the hearing. See 16 CFR 1.11(e). Any comment requesting an informal hearing should also include a statement explaining why an informal hearing is warranted and a summary of any anticipated oral or documentary testimony. If the comment identifies disputed issues of material fact, the comment should include evidence supporting such assertions. If the Commission schedules an informal hearing, either on its own initiative or in response to request by an interested party, the FTC will publish a separate document notifying the public pursuant to 16 CFR 1.12(a) (''initial notice of informal hearing'').

I. Background

A. Trade Regulation Rule on Impersonation of Government and Business

Published elsewhere in this issue of the **Federal Register** is the Commission's final Trade Regulation Rule entitled ''Rule on Impersonation of Government and Business,'' promulgated under the authority of section 18 of the FTC Act, 15 U.S.C. 57a(b)(2); the provisions of Part 1, Subpart B, of the Commission's Rules of Practice, 16 CFR 1.7–1.20; and the Administrative Procedure Act (''Impersonation Rule'' or ''Rule''). This authority permits the Commission to promulgate, modify, or repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting

commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

Promulgation of this Rule followed publication of an Advance Notice of Proposed Rulemaking (ANPR) on December 23, 2021,[1] and a Notice of Proposed Rulemaking on October 17, 2022 (NPRM).[2] On March 30, 2023, the Commission published an Initial Notice of Informal Hearing,[3] and on May 4, 2023, Chief Administrative Law Judge D. Michael Chappell presided over the informal hearing,[4] which was viewable live from the Commission's website, *https://www.ftc.gov*. Because there were no disputed issues of material fact to resolve, the informal hearing included no cross examination or rebuttal submissions, and the presiding officer made no recommended decision.

B. Need for a Supplemental Notice of Proposed Rulemaking as to Impersonation of Individuals and Liability for Provision of Goods and Services Used in Impersonation Scams

Based on the comments in response to the ANPR, NPRM, Notice of Informal Hearing, and Informal Hearing, as well as the Commission's history of enforcement and reports to the Commission from consumers and other sources, as discussed in Section V below, the Commission has reason to believe the deceptive or unfair impersonation of individuals and other parties not currently addressed by the Impersonation Rule is prevalent and taking comments on additional proposed provisions is in the public interest.

Additionally, as stated in the Statement of Basis and Purpose for the Rule, Question 6 of the NPRM asked for comments on whether the final rule should contain a prohibition against providing the means and instrumentalities for violations against government or business impersonation.[5] As summarized in this document, the Commission received more than 20 comments that expressly addressed this question, and many of the sentiments reflected in these comments were also echoed by several commenters that presented oral statements at the Informal Hearing.[6] Based upon the comments received in connection with the proposed provision regarding means and instrumentalities, the Commission decided that the specific provision warranted further analysis and consideration, and the Commission declined to adopt what was then proposed 16 CFR 461.4. Instead, the Commission stated it would continue to consider the issue, including soliciting additional comment. This SNPRM discusses the comments the Commission received on this proposed section. It also discusses how the comments submitted in response to the Commission's earlier requests for comment informed the Commission's current proposals to (1) rename the Impersonation Rule the ''Rule on Impersonation of Government, Businesses, and Individuals;'' (2) include a definition of ''individual'' in the Rule; (3) amend the Rule to include a prohibition of impersonation of individuals; and (4) extend liability to parties who provide goods and services with knowledge or reason to know that those goods or services will be used in impersonations of the kind that are themselves unlawful under the Rule, as amended. The Commission also poses specific questions for comment. Finally, the SNPRM provides the proposed amended text of the Rule.

II. Summary of Comments to ANPR

The Commission published the ANPR on December 23, 2021, and took comments for 60 days. The Commission invited the public to comment on any issues or concerns the public believes are relevant or appropriate to the Commission's consideration of the proposed rule and also posed 13 specific questions for the public.[7] Relevant to this SNPRM, the Commission solicited public comment on the prevalence and methods of impersonation of individuals or entities other than governments and businesses in interstate commerce and whether and how individuals and entities provide the means and instrumentalities used in the impersonation of government, businesses, and individuals.[8]

The Commission received 164 timely and unique comments in response to the ANPR, which are publicly available on this rulemaking's docket at *https://www.regulations.gov/docket/FTC-2021-0077/comments*.[9] No commenter expressed the view that the Commission should not commence this rulemaking. Most comments—140—came from individual consumers. Ten comments were submitted by businesses,[10] 11 by trade associations,[11] and three by government agencies.[12]

A. Comments About the Impersonation of Individuals

Seven commenters discussed the significant impact of impersonation of individuals or parties other than government or businesses. NAAG stated that State consumer protection agencies receive thousands of complaints annually regarding imposter scams that do not fit into government or business impersonation, for example grandparent or romance scams, and that ''data from state consumer protection agencies suggests that these scams are only becoming more common.'' [13] WMC Global, a cybersecurity company, listed executive impersonation, public figure impersonation, and political impersonation as categories of individual impersonation of which it is aware.[14] It identified Short Message Services (''SMS''), email, social media, and voice calls as primary methods used by impersonators in contacting consumers.[15]

In addition to those categories of impersonation of individuals, multiple individual commenters recounted their personal experience with impersonation of real or fictitious individuals. One individual commenter reported receiving a call from an individual falsely posing as her grandson and requesting bail money and stated, ''it is very easy to give them a lot of money because they [ ] sound so true and reliable and all that and they are just taking money from elderly people hand over fist.'' [16] Another consumer, identified as a victim to a romance scam, stated ''I feel like nothing can be trusted anymore on the internet and victims are left picking up their pieces of their life and there is zero accountability in catching these crooks.'' [17]

B. Comments About the Means and Instrumentalities of Impersonation

Six commenters addressed the Commission's questions regarding individuals or entities that provide the means and instrumentalities for impersonators to conduct such practices, and the goods and services those individuals or entities provide.

NAAG asserted impersonators ''often use other companies' products and services to execute their scams,'' such as ''marketing companies, call centers, attorneys, third-party mailing services, payment processors, lead list providers, remote offices . . . [d]ating websites, and social media . . . .'' [18] It also addressed the Commission's question regarding the circumstances under which the provision of means and instrumentalities should be considered deceptive or unfair, opining that ''when an entity provides substantial assistance or support to impersonators and knows or should have known that their products [or] services are being used in a fraudulent impersonation scheme, that company could also be held liable under the proposed impersonation rule.'' [19]

Apple, Inc., submitted a comment urging the Commission to adopt a rule targeting bad actors and their

''facilitators'' that are engaging in impersonation fraud without stifling legitimate business activity.[20] Apple stated that impersonators who have obtained stolen gift cards use gray markets [21] to sell the items purchased with those cards, making it harder for consumers to detect the fraud.[22] Apple stated that gray markets are primary ''means and instrumentalities'' that impersonators use to conduct their scams.[23]

Microsoft stated that scammers typically rely on payment processors to receive money from victims of impersonation scams.[24] They also utilize affiliate marketing services to advertise to consumers through malicious ads and pop-up windows.[25]

Erik M. Pelton & Associates (''EMP&A''), a trademark law firm in Virginia, identified several types of entities that may provide the means and instrumentalities for trademark scammers, including landlords providing office space, mail services, the U.S. Postal Service, ''various banks and payment processing services,'' and domain registrars and website hosting services that host bad actors' websites.[26] EMP&A also stated that provision of these goods and services ''should be considered deceptive or unfair following a procedure for putting service providers on notice of the fact that they are unwittingly enabling scammers . . . If scammers are denied these means and instrumentalities, it will become difficult for the scams to be profitable and hopefully they will cease operation.'' [27]

USTelecom, a trade association representing the broadband technology industry, recommended liability for ''individuals or entities that provide the means and instrumentalities for impersonators . . . such as how the FTC has used the [Telemarketing Sales Rule] against robocall enablers,'' but noted that the proposed rule ''should make clear that liability . . . requires proof of knowledge of such fraud or conscious avoidance of it, consistent with FTC precedent and [Telemarketing Sales Rule] and Section 5 jurisprudence.'' [28]

Somos, Inc., which manages registry databases for the telecommunications industry, similarly encouraged the ''[p]rosecution of . . . those knowingly aiding and abetting'' impersonated toll-free numbers.'' [29]

III. Summary of Comments to NPRM

The Commission published the NPRM on October 17, 2022.[30] In the NPRM, the Commission concluded that there is reason to believe that impersonation of government, businesses, and their officials or agents is prevalent.[31] The Commission identified no disputed issues of material fact based on the comment record; explained its considerations in developing the proposed rule; solicited additional public comment thereon, including posing specific questions designed to assist the public in submitting comment; and provided interested parties the opportunity to request to present their positions orally at an informal hearing.[32] Finally, the NPRM set out the Commission's proposed regulatory text.

The Commission received 78 comments in response to the NPRM from a diverse group of individuals, industry groups and trade associations, consumer organizations, and government agencies.[33] The majority of comments generally supported the rule as proposed in the NPRM, but some comments raised concerns and recommended specific modifications or additions to the proposed rule.

A. Comments About Individual Impersonations

The Commission received six comments in response to the NPRM that specifically addressed the impersonation of individuals or entities other than government and businesses. A group of Rutgers Law School students urged inclusion of a prohibition on impersonation of individuals and cited an Elder Fraud Report issued by the Federal Bureau of Investigation, stating that ''victims over 60 of confidence fraud and romance scams have steadily increased by approximately 30% since 2019.'' [34] AIM, the European Brands Association, and the Recording Industry Association of America (''RIAA''), also provided comment in support of inclusion of a prohibition on impersonating individuals.[35] The American Association of Retired Persons (''AARP'') strongly urged the inclusion of a prohibition on impersonation of individuals or entities other than governments and businesses, noting that romance scams, which ''rely on the criminal making the target believe they are in a trusted love relationship to steal from them,'' resulted in losses reported to AARP of over $500 million in 2021 (which the AARP believed to be ''a vast undercount'' of harm).[36] AARP additionally stated that its Fraud Watch Helpline received more than 100,000 calls ''ranging from targets who report scams they avoided, consumers trying to determine if something is legitimate, and from victims and their family members.'' [37]

The Electronic Privacy Information Center and other consumer and privacy advocacy organizations strongly urged the Commission to include impersonations of individuals in the rule.[38] The Electronic Privacy Information Center noted that ''the actual number of reported losses from romance and other familial scams are not as high as those reported to be caused by the government and business imposters,'' but because of the ''personal nature'' of individual impersonation scams, ''it is highly likely that many fewer victims of these scams actually make reports to government and other agencies about the devastating losses they have suffered.'' [39] Finally, NCTA—The internet and Television Association (''NCTA'') noted that its member companies ''have seen an increase in sophisticated 'RES IP' scams to impersonate customers online and route traffic through their home networks and residential IP addresses.'' [40]

B. Comments About the Means and Instrumentalities of Impersonation

Twenty-two comments expressly addressed Question 6 of the NPRM, which asked whether the final rule should contain a prohibition against providing the means and instrumentalities for violations against government or business impersonation.[41] Most of the commenters expressed support for the inclusion of a means and instrumentalities provision, some with modification, while two expressed concerns with the inclusion of such a prohibition.

Of the commenters supporting inclusion of a means and instrumentalities prohibition, three of the commenters encouraged the Commission to finalize the text of the proposed rule without modification.[42] These comments argued that inclusion of means and instrumentalities liability would help combat impersonation schemes perpetrated by foreign-based scammers that are outside of U.S. court jurisdiction but obtain services from U.S.-based entities such as payment processors and internet service providers.[43]

Most commenters who addressed Question 6 of the NPRM expressed their support for means and instrumentalities liability but recommended certain modifications. Some expressed concerns that the proposed language could be read too broadly.[44] Others expressed concern that without a specific scienter or knowledge requirement, the proposed provision runs the risk of imposing strict liability against third parties who supply goods or services with no knowledge that those goods or services would be used in the commission of

unlawful impersonations.[45] Accordingly, several commenters urged the Commission to clarify the scope of means and instrumentalities liability or explicitly include a knowledge requirement in the final rule provision.[46]

For example, the Consumer Technology Association (''CTA''), a trade association representing the U.S. consumer technology industry, stated that the Commission's explanation and examples of the ''means and instrumentalities'' provision in the NPRM, which seem to limit its applicability, are ''not squarely reflected in the text of the proposed rule.'' [47] CTA urged the FTC to limit the bounds of ''means and instrumentalities'' in the text of the rule ''to entities that have knowledge or consciously avoid knowing that they are making representations being used to commit impersonation fraud.'' [48] Somos, in its comment, supported the inclusion of a means and instrumentalities provision, but added that ''those involved must knowingly be aiding and abetting the impersonation fraud.'' [49]

USTelecom urged the Commission to ''adjust the proposed language in § 461.4 to codify the requirement that the person *has knowledge or reason to expect* it is providing the means and instrumentalities'' (emphasis in original).[50] USTelecom argued that such modification would ''help to avoid confusion about the new rule's scope and application with regards to intermediaries that, by no fault of their own and by nature of the services they offer, were unintentional conduits for impersonation fraud.'' [51] EMP&A similarly stated that it supported adding ''that the party *must have known or should have known* that it was providing a means or instrumentality to facilitate a scam'' because without such modification ''parties could be held liable even if they had no intention to facilitate the scam.'' [52]

The American Bar Association Section of Intellectual Property Law argued that ''there should be an explicit requirement that parties at least knew or should have known that they were providing the means or instrumentalities'' for unlawful impersonation, and suggested that the Commission could ''explicitly include the language referenced in the [NPRM] from *Shell Oil Co.,* 128 F.T.C. 749 (1999)—acting with 'knowledge or reason to expect that consumers may possibly be deceived as a result.' '' [53] CTIA, an industry group that represents the U.S. wireless communications industry, argued that the NPRM would make liable parties ''providing means and instrumentalities to another entity only where the resulting fraud is a predictable consequence of those actions'' and that ''the proposed rule will appropriately target those actors with malicious intent, while avoiding 'unduly burdening or stifling legitimate business activities,' or punishing 'an innocent entity whose ordinary course of work brought it—unknowingly—into contact with a bad actor.' '' [54]

Other commenters argued that inclusion of a scienter requirement is a necessary but insufficient modification of the proposed language to impose means and instrumentalities liability. For example, NCTA argued that ''liability requires both providing *deceptive* means and instrumentalities, *e.g.,* providing false or misleading claims or counterfeit items, and *actual* knowledge that the deceptive representations or goods will be used to commit impersonation violations.'' [55] Likewise, the Messaging, Malware and Mobile Anti-Abuse Working Group (''M3AAWG'') advocated that, in addition to a ''knowledge or reason-to-know test,'' primary liability under the NPRM's proposed § 461.4 should also require that the provision of such means and instrumentalities be done willfully or in bad faith, and with clear intent and specific knowledge.[56]

A few commenters urged the Commission to adopt a final rule that explicitly recognizes specific or defined ''means and instrumentality'' violations perpetrated in connection with impersonation frauds, such as the use of legal process documents,[57] manipulated media technologies (*i.e.,* deepfakes),[58] or failure to disclose WHOIS data.[59]

Two commenters expressed broad concerns with the proposed language of the means and instrumentalities prohibition in the NPRM. First, the Americans for Prosperity Foundation (''AFPF'') stated that the proposed rule, as drafted, ''fails to provide regulated parties with constitutionally adequate notice of required or prohibited conduct, particularly with respect to the proposed 'means and instrumentalities' prohibition.'' [60] AFPF argued that the proposed provision as proposed is untethered to the Commission's authority under section 5 as, in AFPF's view, it neither required the Commission to prove any of the elements of deception nor contained a scienter requirement.[61] AFPF suggested that the Commission ''not only tether violations to Section 5's text . . . , but also define with specificity the universe of prohibited conduct . . . [and] also revise the proposed rule to make clear that only conduct that a reasonable person would know is fraudulent or dishonest may be subject to civil penalties.'' AFPF requested a supplemental NPRM or an additional 30 days of comment and additionally requested the Commission hold an informal public hearing to receive additional public input.[62] Second, William MacLeod cited concerns that the proposed rule left ''unresolved questions of how the Commission would apply'' the proposed means and instrumentalities provision.[63] Mr. MacLeod stated his belief that the rulemaking process would benefit from ''an opportunity for interested parties to exchange ideas'' and accordingly requested a hearing.[64]

IV. Summary of Comments in Response to Notice of Hearing and Statements at Hearing

On March 30, 2023, the Commission published an Initial Notice of Informal Hearing.[65] In response to the Notice of Informal Hearing, the Commission received 28 comments, which are publicly available on this rulemaking's docket at *https://www.regulations.gov/docket/FTC-2023-0030/comments,* including 13 requests to make oral statements.[66] One comment in response to the Notice of Informal Hearing was relevant to this SNPRM, and eight commenters at the informal hearing provided testimony relevant to this SNPRM.

The American Bankers Association urged adoption of the means and instrumentalities provision without requesting any modifications.[67] However, the other commenters who addressed the means and instrumentalities provision expressed concern that the proposed language in the NPRM did not explain the circumstances under which the Commission would apply that prohibition. Some suggested alternative language imposing a scienter requirement to narrow the scope of this provision.[68]

In addition to his request to make an oral statement at the hearing, William MacLeod expressed in his comment to the Notice of Informal Hearing his concern that the proposed means and instrumentalities prohibition in the NPRM did not include any knowledge standard and requested that the final rule ''explain the definitions and limitations of [means and instrumentalities] as the Commission intends to apply it.'' [69] In his oral testimony at the informal hearing, Mr. MacLeod reiterated his request for further clarification that ''providing the means and instrumentalities doesn't . . . automatically expose everyone involved, from the actors to the ISPs to civil penalties. People unaware of a fraud should not face massive liability for it.'' [70]

The CTA expressed strong support for the NPRM but also concern that the prohibition on providing means and instrumentalities did not ''include a knowledge requirement and could be misinterpreted to impose strict liability'' on unwitting third parties.[71] USTelecom requested that the Commission clarify ''that liability for providing the means and instrumentalities of the illegal impersonation only attaches when a person has knowledge or reason to expect it is providing such a means and instrumentalities,'' so there is no confusion regarding the liability of ''unknowingly unintentional conduits for impersonation fraud.'' [72] Neil Chilson, a senior research fellow at the Center for Growth and Opportunity at Utah State University, also requested that the prohibition against providing means and instrumentalities include a knowledge requirement for liability.[73] The Voice on the Net Coalition (''VON''), an internet communication trade association, urged that the means and instrumentalities provision be modified to require knowledge before liability is imposed.[74] VON further asserted that the ''liability standard should be based on knowledge and the lack of action to prevent fraudulent activity by upstream providers or customers.'' [75] INCOMPAS, which represents communications and technology companies offering broadband video and data offerings, also urged a liability standard ''based on knowledge and the lack of action to prevent fraudulent activity by upstream providers for customers.'' [76] NCTA urged the Commission to ''explicitly incorporate the fundamental elements of both actual knowledge and deception'' into any final rule imposing means and instrumentalities liability.[77] NCTA also urged that the final rule's application of means and instrumentalities liability only apply where ''inherently deceptive means and instrumentalities'' are provided.[78]

V. Reasons for the Proposed Amendments to the Impersonation Rule

The Commission believes the proposed amendments set out in this SNPRM will improve its ability to combat impersonation fraud and could provide significant benefits to those harmed by impersonators, while strengthening deterrence against such fraud in the first instance. Further, the Rule as amended would not impose new burdens on honest individuals or businesses.

A. Need for and Objectives of the Proposed Amendments to the Impersonation Rule

The Commission's objective for proposing these amendments to the Rule is to more effectively and efficiently redress consumers harmed by impersonation schemes and to more effectively address the types of unlawful impersonation affecting consumers.

1. Accessing Monetary Relief

The Commission described in the ANPR and summarized in the NPRM how the 2021 U.S. Supreme Court decision in *AMG* [79] changed the legal landscape and made it significantly more difficult for the Commission to obtain monetary relief, including consumer redress.[80] Post-*AMG,* the Commission must rely in large part on section 19 of the FTC Act, which provides two paths for consumer redress. On the first path, following issuance of a complaint by the Commission, agency staff must litigate the case before an Administrative Law Judge through the agency's administrative process, leading to the Commission's issuance of a Final Decision.[81] Following any reconsideration of the Commission's final decision and any subsequent appeal to a federal Court of Appeals, the Commission must then file a new case in federal district court and establish that the defendant engaged in fraudulent or dishonest conduct.[82] With a rule in effect, the Commission may avail itself of the second, shorter, path and directly seek consumer redress through a federal court action.[83] Thus, this SNPRM's proposed amendments covering impersonation of individuals [84] and those who with knowledge provide the means and instrumentalities to others to engage in impersonation of business, government, or individuals would allow the Commission to proceed more efficiently and effectively to protect consumers and obtain monetary relief. Because the Commission can seek civil penalties for rule violations, the proposed rule also should achieve better deterrence against bad actors.[85]

2. Impersonation of Individuals and Other Entities Not Covered by Government and Businesses Impersonation Rule

This SNPRM proposes to prohibit the deceptive impersonation of individuals and would address conduct that is prevalent and harmful.[86] Extending the Rule to cover impersonation of individuals, real or fictitious, will allow the Commission to more effectively remedy harm caused to consumers by romance scams, *e.g.,* scammers posing as individuals interested in a romantic relationship to extract money or sensitive information from consumers.[87] The SNPRM also would provide a way to remedy other relationship-based scams, such as grandparent scams where scammers pose as a grandchild in need of immediate financial assistance in an attempt to extract money from the consumers.[88]

Since issuance of the ANPR in December 2021, the FTC has received thousands to tens of thousands of complaints each quarter from consumers concerning romance scams or family and friend impersonations.[89] According to data from complaints submitted to the Commission, the median dollar loss of consumers targeted by romance or family and friend impersonation ranged from $1,850 to $2,400 and $614 to $800, respectively, in the quarters since publication of the ANPR.[90] These types of impersonation scams have a significant impact on older consumers as well. As noted in the Commission's 2021–2022 ''Protecting Older Consumers'' report, in 2021, the highest aggregate dollar losses reported by older adults were in the romance scam category, with a total reported loss of $213 million.[91] Further, the individual losses caused by romance scams are outsized compared to other types of scams reported by older consumers, including other impersonation scams: the reported individual dollar loss by adults age 60 and over for romance scams was $5,100, compared to $658 for all fraud reports by consumers in that age group.[92] In the Commission's 2022–2023 ''Protecting Older Consumers'' report, the Commission found that ''[r]eported losses to romance scams by older adults increased 13%, topping the record levels seen in 2021.'' [93]

The revisions regarding impersonation of individuals proposed in this SNPRM will allow the

Commission to more effectively redress and protect consumers targeted by impersonation scams. Further, the SNPRM is designed to deter the perpetrators of such scams by exposing them to greater and more immediate monetary liability, including civil penalties.

3. Means and Instrumentalities

The SNPRM's proposed means and instrumentalities provision [94] would allow the Commission to more fully provide redress for those consumers who have been targeted by any impersonation scam where a party knew or had reason to know that the goods and services they provided will be used for the purpose of impersonations in violation of the Rule. The Commission took into consideration those comments in response to the NPRM that urged the proposed means and instrumentalities provision be revised to include a knowledge component and clarify the scope of the provision. Accordingly, this SNPRM proposes § 461.5, ''Provision of Goods or Services for Unlawful Impersonation Prohibited,'' to clarify that ''means and instrumentalities'' liability attaches where a party provides goods and services used in impersonation in violation of the Impersonation Rule, and where that party has knowledge or reason to know that the goods or services the party provides will be used in impersonations of the kind that are themselves unlawful under the Rule.[95] As with other Rule provisions this SNPRM's proposed § 461.5 is designed to deter the perpetrators of such scams by exposing them to greater and more immediate monetary liability, including civil penalties.[96]

B. Overview and Scope of Proposed Amendments to the Impersonation Rule

The Commission proposes four revisions to the Impersonation Rule in this SNPRM. Each proposed revision will be discussed in order. First, because amendment of the Rule as proposed by the SNPRM would prohibit impersonation of individuals as well as businesses and government, the SNPRM proposes to change the title of the Rule to read ''Rule on Impersonation of Government, Businesses, and Individuals.'' Second, this SNPRM proposes to add a definition of ''Individual'' in § 461.1 to mean ''a person, entity, or party, whether real or fictitious, other than those that constitute a business or government under this Part.'' The Commission proposes this definition of ''individual'' to make clear the type of impersonation that is prohibited by § 461.4.

Third, proposed § 461.4, ''Impersonation of Individuals Prohibited,'' prohibits the impersonation of individuals in connection with commerce, as commerce is defined in the Federal Trade Commission Act (15 U.S.C. 44). This provision mirrors the existing prohibitions in §§ 461.2 and 461.3, prohibiting impersonation of government and businesses, respectively. Those provisions themselves borrowed from existing rules and statutory definitions.[97] As detailed in Section V.A.2. of this document, consumer complaints and the Commission's experience, as well as the comments and other evidence cited herein, are replete with examples of impersonation of individuals. The proposed prohibition in § 461.4 would cover unlawful conduct by persons who misrepresent that they are or are affiliated with an individual, as defined in § 461.1, including but not limited to: (1) calling, messaging, or otherwise contacting a person or entity while posing as an individual or affiliate thereof, including by identifying an individual by name or by implication; (2) sending physical mail through any carrier using addresses, identifying information, or insignia or likeness of an individual; (3) creating a website or other electronic service or social media account impersonating the name, identifying information, or insignia or likeness of an individual; (4) creating or spoofing an email address using the name of an individual; (5) placing advertisements, including dating profiles or personal advertisements, that pose as an individual or affiliate of an individual; and (6) using an individual's identifying information, including likeness or insignia, on a letterhead, website, email, or other physical or digital place.[98]

Fourth, proposed § 461.5, ''Provision of Goods or Services for Unlawful Impersonation Prohibited,'' makes it unlawful to provide goods or services with knowledge or reason to know that those goods or services will be used in impersonations of the kind that are themselves unlawful under the Rule. The NPRM proposed a similar provision, which referred to ''means and instrumentalities,'' but lacked a requirement to prove ''knowledge or reason to know.'' This SNPRM proposes modified language based on comments to the ANPR, NPRM, the informal hearing and the Commission's experience, which support the addition of the above-mentioned knowledge requirement.

As described in Section III.B., above, many commenters expressed concern or requested modification of the means and instrumentalities provision proposed in the NPRM. Some supportive commenters stated that the provision could be read too broadly.[99] Other commenters argued that without a scienter or knowledge requirement, the proposed rule provision runs the risk of imposing strict liability against innocent and unwitting third-party providers.[100] Accordingly, several commenters urged the Commission to clarify the scope of means and instrumentalities liability or explicitly include a knowledge requirement in the final rule provision.[101]

The Commission has carefully considered the comments and all concerns and proposals expressed in them. As noted in the NPRM, some commenters suggested that the Commission impose liability on a broader set of actors, namely those who assist and facilitate violations.[102] The Telemarketing Sales Rule (''TSR'') imposed assisting-and-facilitating liability, a form of indirect liability authorized by the TSR's authorizing statue.[103] Sections 5 and 18 of the FTC Act, which authorize this Rule, contain no such authorizing language. However, a long line of case law describes a form of direct liability for a party who, despite not having direct contact with the injured consumers, ''passes on a false or misleading representation with knowledge or reason to expect that consumers may possibly be deceived as a result.'' [104] In other words: ''One who places in the hands of another a means of consummating a fraud or competing unfairly in violation of the Federal Trade Commission Act is himself guilty of a violation of the Act.'' [105] Accordingly, the Commission proposes, in § 461.5, expressly to impose liability on those who provide goods or services with knowledge or reason to know that those goods or services will be used in impersonations of the kind that are themselves unlawful under the Rule.

C. The Rulemaking Process

The Commission can decide to finalize this supplemental proposed rule if the rulemaking record, including the public comments in response to this SNPRM, supports such a conclusion. The Commission may, either on its own initiative or in response to a commenter's request, engage in additional processes, which are described in 16 CFR 1.12 and 1.13. If the Commission on its own initiative decides to conduct an informal hearing, or if a commenter files an adequate request for such a hearing, then a separate notice will issue under 16 CFR 1.12(a). Based on the comment record

and existing prohibitions against impersonation of government and businesses under section 5 of the FTC Act, the Commission does not here identify any disputed issues of material fact necessary to be resolved at an informal hearing.The Commission may still do so later, on its own initiative or in response to a persuasive showing from a commenter, *i.e.,* in response to data or other evidence demonstrating that there is a genuine, bona fide dispute over material facts that will affect the outcome of the proceeding.[106]

VI. Paperwork Reduction Act

In addition to the requirements of section 22, the Commission must provide in any NPRM the ''information required by the Regulatory Flexibility Act, 5 U.S.C. 601–612, and the Paperwork Reduction Act, 44 U.S.C. 3501–3520, if applicable.'' 16 CFR 1.11(c)(4). The Paperwork Reduction Act requires the Commission to engage in additional processes and analysis if it proposes to engage in a ''collection of information'' as part of the proposed rule. 44 U.S.C. 3506. The Commission states that this SNPRM contains no collection of information.

VII. Preliminary Regulatory Analysis

Under section 22 of the FTC Act, the Commission, when it publishes any NPRM, must include a ''preliminary regulatory analysis.'' 15 U.S.C. 57b–3(b)(1). The required contents of a preliminary regulatory analysis are (1) ''a concise statement of the need for, and the objectives of, the proposed rule,'' (2) ''a description of any reasonable alternatives to the proposed rule which may accomplish the stated objective,'' and (3) ''a preliminary analysis of the projected benefits and any adverse economic effects and any other effects'' for the proposed rule and each alternative, along with an analysis ''of the effectiveness of the proposed rule and each alternative in meeting the stated objectives of the proposed rule.'' 15 U.S.C. 57b–3(b)(1)(A)–(C). This SNPRM already provided the concise statement of the need for, and the objectives of, this proposal in Item V.A above. It addresses the other requirements below.

A. Reasonable Alternatives and Anticipated Costs

The Commission believes that the benefits of proceeding with these proposals will significantly outweigh the costs, but it welcomes public comment and data (both qualitative and quantitative) on any benefits and costs to inform a final regulatory analysis. Critical to the Commission's analysis is that these proposed amendments to the Rule would allow for monetary relief to victims of impersonations of individuals and also for the imposition of civil penalties against violators. Such results will provide benefits to consumers, as well as to the agency and its mission, without imposing any costs on consumers. It is difficult to quantify with precision all the benefits that would arise from amending the Impersonation Rule to include a prohibition on impersonation of individuals, but they can be described qualitatively.

Consumers have reported 152,696 instances of family and friend impersonation and associated total losses of approximately $339 million from 2019 through 2023.[107] For romance scams, from 2019 through 2023, consumers reported being defrauded of roughly $4.978 billion in 307,370 incidents.[108] In 2022, older adults reported a 13% increase in losses to romance scammers, surpassing the record losses reported in 2021.[109] Adopting the proposed amendments may make some of the losses experienced by future victims recoverable through consumer redress and also allow for the imposition of civil penalties.[110]

While providing the means and instrumentalities for such scams is already illegal under section 5, civil penalties cannot be imposed without the proposed amendments. Adopting the proposed amendments may also have a deterrence effect on impersonation scams and those providing the means and instrumentalities for such scams. Deterring plainly illegal conduct is challenging. Scholarship on deterrence suggests that the potential severity of consequences, such as civil penalties, is less likely to influence behavior than the perceived likelihood of detection and punishment.[111] Still, a rule that makes it less likely that impersonators and those providing the means and instrumentalities for such scams get to keep their ill-gotten gains and more likely that they have to pay civil penalties can have deterrence effects, whatever their magnitude. And the publicity around any eventual amendments to the Rule could have the salutary effect of complementing the Commission's consumer education work by elevating public awareness of these prevalent forms of fraud, which could increase how often they are detected and reported.

B. Regulatory Flexibility Act—Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires the Commission to prepare and make available for public comment an ''initial regulatory flexibility analysis'' (''IRFA'') in connection with any NPRM. 5 U.S.C. 603. An IRFA requires many of the same components as section 22 of the FTC Act and the Paperwork Reduction Act. The IRFA must furthermore contain, among other things, ''a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.'' 5 U.S.C. 603(b)(3). This and other requirements do not apply, however, whenever ''the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b).

The Commission certifies that the SNPRM will not have a significant economic impact on a substantial number of honest, small entities, and this document serves as notice to the Small Business Administration of the Commission's certification. Because the deceptive impersonation of individuals is already prohibited by section 5 of the FTC Act, and section 5 similarly makes unlawful providing the means and instrumentalities for a violation of section 5 of the Act, the SNPRM would not change the state of the law in terms of what is legal and what is illegal. Furthermore, the proposed amendments to the Rule would impose no recordkeeping requirement and would not create or impose any compliance costs. The main changes arise for entities violating section 5 through the impersonation of individuals and by providing the means and instrumentalities for impersonations that would be unlawful under the Rule if this SNPRM is finalized as drafted. Adoption of the proposed amendments to the Rule would make such conduct a Rule violation in addition to being a section 5 violation. Such violators would no longer be immune from civil penalties for a first offence and could be ordered by a federal court to pay significant civil penalties and to provide redress to their victims. Adoption of the proposed amendments could, therefore, constitute a significant economic impact for law violators, but it is unlikely to affect a substantial number of small entities or individuals otherwise not engaging in conduct prohibited by section 5 or the SNPRM. The Commission believes that the vast majority of small entities and individuals do not deceptively impersonate individuals or knowingly

provide goods and services used in impersonating government, businesses, or individuals in a manner that would be unlawful under the provisions set out in this SNPRM. Furthermore, the Commission does not consider those small entities that are violating existing law to be among those Congress protected in enacting the additional procedural protections for small entities when agencies consider rulemaking.

VIII. Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the SNPRM. The Commission requests that factual data or other evidence on which the comments are based be submitted with the comments, particularly if a commenter intends to dispute an issue of fact material to this rulemaking.[112] In addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) Should the Commission amend the Impersonation Rule to include a prohibition of impersonation of individuals? Why or why not?

(2) Please provide comment, including relevant data, statistics, consumer complaint information, or any other evidence, on proposed §§ 461.4 and 461.5. Regarding each provision, please include answers to the following questions:

(a) How prevalent is the act or practice the provision seeks to address?

(b) What is the provision's impact (including any benefits and costs), if any, on consumers, governments, and businesses, both those existing and those yet to be started?

(c) What alternative proposals should the Commission consider?

(3) Does the Rule, if amended as proposed by the SNPRM, contain a collection of information?

(4) Would the Rule, if amended as proposed by the SNPRM, have a significant economic impact on a substantial number of small entities? If so, how could it be modified to avoid a significant economic impact on a substantial number of small entities?

(5) The SNPRM proposes including in the amended Impersonation Rule a two-part prohibition against impersonation of individuals in § 461.4. Is this prohibition clear and understandable? Is it ambiguous in any way? How if at all should it be improved?

(6) For purposes of prohibiting impersonation of individuals, should the Commission define ''individual'' to mean ''a person, entity, or party, whether real or fictitious, other than those that constitute a business or government under this part''? Is this definition clear and understandable? Is it ambiguous in any way? How if at all should it be improved?

(7) The SNPRM proposes including in the amended Impersonation Rule a two-part prohibition in § 461.5 against providing goods or services with knowledge or reason to know that those goods or services will be used to (a) materially and falsely pose as, directly or by implication, a government entity or officer thereof, a business or officer thereof, or an individual, in or affecting commerce as commerce is defined in the Federal Trade Commission Act (15 U.S.C. 44); or (b) materially misrepresent, directly or by implication, affiliation with, including endorsement or sponsorship by, a government entity or officer thereof, a business or officer thereof, or an individual, in or affecting commerce as commerce is defined in the Federal Trade Commission Act (15 U.S.C. 44). Should the Rule be revised to contain this prohibition against providing goods or services with knowledge or reason to know that those goods or services will be used to unlawfully impersonate a government, business, or individual? Why or why not? Is the standard ''know or have reason to know,'' which reflects current law, sufficiently clear and understandable? Is it ambiguous in any way? How, if at all, should it be improved?

IX. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 30, 2024. Write ''Impersonation SNPRM, R207000'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the website *https://www.regulations.gov*.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. To ensure that the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Impersonation SNPRM, R207000'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex I), Washington, DC 20580. If possible, please submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it and visit *https://www.regulations.gov/docket/FTC-2024-0019* to read a plain-language summary of the proposed rule. The FTC Act and

other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before April 30, 2024. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy*.

X. Communications by Outside Parties to the Commissioners or Their Advisors

Under Commission Rule 1.18(c)(1), 16 CFR 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor will be subject to the following treatment: written communications and summaries or transcripts of all oral communications must be placed on the rulemaking record. Unless the outside party making an oral communication is a member of Congress, communications received after the close of the public-comment period are permitted only if advance notice is published in the Weekly Calendar and Notice of ''Sunshine'' Meetings.

Endnotes

[1] Fed. Trade Comm'n, ANPR: Trade Regulation Rule on Impersonation of Gov't and Businesses, 86 FR 72901 (Dec. 23, 2021) (''ANPR''), *https://www.federalregister.gov/documents/2021/12/23/2021-27731/trade-regulation-rule-on-impersonation-of-government-and-businesses.*

[2] Fed. Trade Comm'n, Notice of Proposed Rulemaking: Trade Regulation Rule on Impersonation of Government and Businesses, 87 FR 62741 (Oct. 17, 2022) (''NPRM''), *https://www.federalregister.gov/documents/2022/10/17/2022-21289/trade-regulation-rule-onimpersonation-of-government-and-businesses.*

[3] Fed. Trade Comm'n, Initial notice of informal hearing; final notice of informal hearing; request for public comment and speakers, 88 FR 19024 (Mar. 30, 2023), *https://www.federalregister.gov/documents/2023/03/30/2023-06537/trade-regulation-rule-on-impersonation-of-government-and-businesses* (''Informal Hearing Notice'').

[4] A copy of the transcript of the May 4, 2023, Informal Hearing is available at *https://www.ftc.gov/system/files/ftc_gov/pdf/impersonationruleinformalhearingtranscript.pdf.* References to the transcript from the May 4, 2023, Informal Hearing are cited herein as: Name of commenter, May 2023 Tr at page no. (*e.g.,* Doe, May 2023 Tr at #). A copy of the transcript of the Informal Hearing and the comments submitted in response to this hearing can be found at: *https://www.regulations.gov/docket/FTC-2023-0030/document.*

[5] *See* Section III.D. of the SBP of the Impersonation Rule published elsewhere in this edition of the **Federal Register***;* NPRM, 87 FR at 62750.

[6] *See https://www.regulations.gov/docket/FTC-2023-0030/comments.*

[7] ANPR, 86 FR 72901.

[8] *Id.* at 72904.

[9] While the docket lists 169 comments, four of these were submitted by AVIXA, Inc. (''Audio Visual and Integrated Experience Association,'' collectively ''AVIXA ANPR Cmts.'') and two by the National Association of Attorneys General (''NAAG,'' collectively ''NAAG ANPR Cmts.''), accounting for four total duplicates, while one comment was untimely filed eight months after the close of comments and only said ''no.'' *See* AVIXA ANPR Cmts., *https://www.regulations.gov/comment/FTC-2021-0077-0089, https://www.regulations.gov/comment/FTC-2021-0077-0085, https://www.regulations.gov/comment/FTC-2021-0077-0126, https://www.regulations.gov/comment/FTC-2021-0077-0128;* NAAG ANPR Cmts., *https://www.regulations.gov/comment/FTC-2021-0077-0152, https://www.regulations.gov/comment/FTC-2021-0077-0164;* Lucy Chen, Cmt. on ANPR (Oct. 21, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0171.*

[10] *See* Pub'rs Clearing House, Cmt. on ANPR (Feb. 8, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0008;* YouMail Inc., Cmt. on ANPR (Feb. 22, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0148;* WMC Global, Cmt. on ANPR (Feb. 22, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0154* (''WMC ANPR Cmt.''); DIRECTV, LLC, Cmt. on ANPR (Feb. 23, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0167;* Somos, Inc., Cmt. on ANPR (Feb. 23, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0162* (''Somos ANPR Cmt.''); Microsoft Corp., Cmt. on ANPR (Feb. 22, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0135* (''Microsoft ANPR Cmt.''); Apple, Inc., Cmt. on ANPR (Feb. 23, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0159* (''Apple ANPR Cmt.''); Cotney Attorneys & Consultants, Cmt. on ANPR (Feb. 22, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0140;* Erik M. Pelton & Associations, Consultants, Cmt. on ANPR (Feb. 22, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0156* (''Pelton ANPR Cmt.''); Informa PLC, Cmt. on ANPR (Feb. 22, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0166.*

[11] *See* Exhibitions & Conferences Alliances, Cmt. on ANPR (Feb. 15, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0009;* AVIXA, Inc., Cmt. on ANPR (Feb. 17, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0085* (''AVIXA ANPR Cmt.''); Experiential Designers & Producers Association, Cmt. on ANPR (Feb. 16, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0073;* Association of Equipment Manufacturers, Cmt. on ANPR (Feb. 23, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0168*); The American Apparel & Footwear Association, Cmt. on ANPR (Feb. 22, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0141;* NCTA—The internet & Television Association, Cmt. on ANPR (Feb. 23, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0169;* USTelecom, Cmt. on ANPR (Feb. 23, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0160* (''USTelecom ANPR Cmt.''); International Housewares Association, Cmt. on ANPR (Feb. 22, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0144;* National Association of Broadcasters, Cmt. on ANPR (Feb. 22, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0146;* CTIA, Cmt. on ANPR (Feb. 23, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0161;* Consumer Tech. Ass'n, Cmt. on ANPR (Feb. 17, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0091.*

[12] *See* Broward Cnty., Fla., Cmt. on ANPR (Feb. 16, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0075;* NAAG, Cmt. on ANPR (Feb. 23, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0164* (''NAAG ANPR Cmt.''); Nat'l Ass'n of State Charity Officials (''NASCO''), Cmt. on ANPR, at 1 (Feb. 22, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0165.*

[13] NAAG ANPR Cmt. at 8.

[14] WMC ANPR Cmt. at 4.

[15] WMC ANPR Cmt. at 4.

[16] *See* Barbara Lay Cmt. on ANPR (Feb. 18, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0109.*

[17] *See* Mai Huynh Cmt. on ANPR (Feb. 22, 2022), *https://www.regulations.gov/comment/FTC-2021-0077-0155.*

[18] NAAG ANPR Cmt. at 8.

[19] *Id.* at 10.

[20] Apple ANPR Cmt.

[21] Gray markets ''allow consumers to sell physical and digital goods at a discounted price. Impersonators who have obtained stolen gift card funds utilize gray markets to sell items purchased with those funds to other consumers who may be unaware of the fraudulent source of the items they are purchasing.'' *Id.*

[22] *See id.*

[23] *Id.*

[24] Microsoft ANPR Cmt. at 6.

[25] *See id.*

[26] *See* Pelton ANPR Cmt. at 6–7.

[27] *Id.* at 6–7.

[28] USTelecom ANPR Cmt. at 3–4.

[29] Somos ANPR Cmt. at 3, 5.

[30] NPRM, 87 FR 62741.

[31] *See id.* at 62741–42.

[32] *Id.* at 62750.

[33] Fed. Trade Comm'n, Trade Regulation Rule on Impersonation of Government and Businesses, *https://www.regulations.gov/docket/FTC-2022-0064/comments.*

[34] Suhkvir Singh/Rutgers Law School Students, Cmt. on NPRM at 1 (Nov. 22, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0019* (internal citation omitted).

[35] AIM, the European Brands Association, Cmt. on NPRM (Dec. 13, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0041* (''AIM NPRM Cmt.''); Recording Industry Association of America, Cmt. on NPRM (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0064* (''RIAA NPRM Cmt.'').

[36] AARP, Cmt. on NPRM at 2 (Dec. 14, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0043.*

[37] *Id.* at 2.

[38] Electronic Privacy Information Center, National Consumer Law Center, National Consumers League, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, and U.S. PIRG, Cmt. on NPRM at 5 (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0070* (''EPIC NPRM Cmt.'').

[39] *Id.* at iv–v.

[40] NCTA—The internet and Television Association, Cmt. on NPRM at 8 (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0071* (''NCTA NPRM Cmt.'').

[41] *See* 87 FR 62750; *see also* United States Patent and Trademark Office, Cmt. on NPRM (Dec. 2, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0026* (''USPTO NPRM Cmt.''); Anonymous, Cmt. on NPRM (Dec. 9, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0033* (''0033 NPRM Cmt.''); AIM NPRM Cmt.; Erik M. Pelton & Associates, PLLC, Cmt. on NPRM (Dec. 14, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0045* (''Pelton NPRM Cmt.''); NetChoice, Cmt. on NPRM (Dec. 15, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0053* (''NetChoice NPRM Cmt.''); Messaging, Malware and Mobile Anti-Abuse Working Group, Cmt. on NPRM (Dec. 15, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0051* (''M3AAWG NPRM Cmt.''); Consumer Technology Association, Cmt. on NPRM (Dec. 16, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0063* (''CTA NPRM Cmt.''); NCTA NPRM Cmt.; American Society of Association Executives, Cmt on NPRM (Dec. 16, 2022), *https://www.regulations.gov/comment/FTC-2022-0064-0057* (''ASAE NPRM Cmt.''); International Trademark Association, Cmt. on NPRM (Dec. 15, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0054* (''INTA NPRM Cmt.''); Somos NPRM Cmt.; CTIA, Cmt. on NPRM (Dec. 16, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0066* (''CTIA NPRM Cmt.''); U.S. Copyright Office, Cmt. on NPRM (Dec. 16, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0067* (''USCO NPRM Cmt.''); USTelecom—The Broadband Association, Cmt. on NPRM (Dec. 16, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0067* (''USTelecom NPRM Cmt.''); Exhibitions & Conference Alliance, Cmt. on NPRM (Dec. 16, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0060* (''ECA NPRM Cmt.''); RIAA NPRM Cmt.; American Bar Association Intellectual Property Law Section, Cmt. on NPRM (Dec. 16, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0061* (''ABA–IPL NPRM Cmt.''); Americans for Prosperity Foundation, Cmt. on NPRM (Dec. 16, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0062* (''AFPF NPRM Cmt.''); ZoomInfo Technologies LLC, Cmt. on NPRM (Dec. 16, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0079* (''Zoom NPRM Cmt.''); American Bankers Association, Cmt. on NPRM (Dec. 16, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0080;* Coalition for Online Accountability, Cmt. on NPRM (Dec. 16, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0074* (''COA NPRM Cmt.''); William MacLeod, Cmt. on NPRM (Dec. 16, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0078* (''MacLeod NPRM Cmt.''); Cindy Brown et. al, Cmt. on NPRM (Dec. 16, 2022) *https://www.regulations.gov/comment/FTC-2022-0064-0077* (''Brown NPRM Cmt.'').

[42] USPTO NPRM Cmt. at 10; USCO NPRM Cmt. at 8; RIAA NPRM Cmt. at 3.

[43] USPTO NPRM Cmt. at 10; USCO NPRM Cmt. at 8; RIAA NPRM Cmt. at 3.

[44] 0033 NPRM Cmt.; ABA–IPL NPRM Cmt. at 2; Zoom NPRM Cmt. at 1.

[45] ABA–IPL NPRM Cmt. at 1–2; NetChoice NPRM Cmt. at 2; USTelecom NPRM Cmt. at 2.

[46] NetChoice NPRM Cmt. at 2; CTA NPRM Cmt.; ASAE NPRM Cmt. at 1; INTA NPRM Cmt.; Somos NPRM Cmt.; CTIA NPRM Cmt. at 7; USTelecom NPRM Cmt. at 2; ECA NPRM Cmt. at 3; ABA–IPL NPRM Cmt. at 3; Zoom NPRM Cmt. at 2; ABA NPRM Cmt. at 3.

[47] CTA NPRM Cmt. at 7.

[48] *Id.; see also* ASAE NPRM Cmt.

[49] Somos NPRM Cmt. at 2.

[50] USTelecom NPRM Cmt. at 2.

[51] USTelecom NPRM Cmt. at 2.

[52] Pelton NPRM Cmt. at 3 (emphasis in original).

[53] ABA–IPL NPRM Cmt. at 3.

[54] CTIA NPRM Cmt at 7.

[55] NCTA NPRM Cmt. at 2.

[56] M3AAWG NPRM Cmt. at 10.

[57] Brown NPRM Cmt. at 8.

[58] M3AAWG NPRM Cmt. at 3.

[59] COA NPRM Cmt. at 3; M3AAWG NPRM Cmt. at 4–5. ''WHOIS data'' is a commonly used internet record listing that identifies who owns a domain and how to contact them.

[60] AFPF NPRM Cmt. at 2.

[61] AFPF NPRM Cmt. at 5–6.

[62] *Id.* at 8.

[63] MacLeod NPRM Cmt. at 2.

[64] *Id.*

[65] Informal Hearing Notice, 88 FR 19024.

[66] Because this informal hearing was the first held in several decades, the Commission allowed interested parties to request the opportunity to make an oral comment in response to the Notice of Informal Hearing as well as the NPRM. However, the Commission noted that in the future it may limit oral statements to those who requested to make an oral statement in response to the NPRM, as provided for in the Rules of Practice. *Id.* at 19025 n.24.

[67] American Bankers Association, May 2023 Tr at 39–40.

[68] *See* CTA, May 2023 Tr at 16; MacLeod, May 2023 Tr at 27; USTelecom, May 2023 Tr at 30; Chilson, May 2023 Tr at 34; VON, May 2023 Tr at 36; INCOMPAS, May 2023 Tr at 42, 44; NCTA, May 2023 Tr at 51–52.

[69] William MacLeod, Cmt. on Informal Hearing Notice at 7 (Apr. 14, 2023) *https://www.regulations.gov/comment/FTC-2023-0030-0019.*

[70] MacLeod, May 2023 Tr at 27.

[71] CTA, May 2023 Tr at 16.

[72] USTelecom, May 2023 Tr at 30.

[73] Chilson, May 2023 Tr at 34.

[74] Voice on the Net Coalition, May 2023 Tr at 36.

[75] *Id.* at 36.

[76] INCOMPAS, May 2023 Tr at 42, 44.

[77] NCTA, The internet & Television Assoc., May 2023 Tr at 51.

[78] *Id.* at 51–52.

[79] *See AMG Cap. Mgmt., LLC* v. *FTC,* 141 S. Ct. 1341, 1352 (2021).

[80] *See* ANPR, 78 FR at 72902 & n.24 (discussing *AMG Cap. Mgmt.*); NPRM, 87 FR at 62746.

[81] In July 2023, the Commission amended its rules of practice for adjudicative proceedings. *See* 88 FR 42872 (July 5, 2023). Following those amendments, administrative law judges presiding over an administrative hearing issue a recommended decision, rather than an initial decision as previously issued. *Id.* at 42873. The Commission then automatically reviews the decision and either affirms in full or rejects, in whole or in part, and issues its own decision, which is final. *Id.* These rules changes do not impact the requirements under section 19.

[82] *See* 15 U.S.C. 57b(a)(2) (''If the Commission satisfies the court that the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief.'').

[83] *Compare* 15 U.S.C. 57b(a)(1) (rule violations), *with id.* 57b(a)(2) (section 5 violations).

[84] As noted in the NPRM, the Commission's Telemarketing Sales Rule, Mortgage Assistance Relief Services Rule, and R-Value Rule expressly prohibit deception by way of impersonation and allow for direct pursuit of section 19 remedies in federal court, including civil penalties and consumer redress, in specific contexts. However, the Impersonation Rule does not reach individuals.

[85] NPRM, 87 FR at 62749.

[86] *See, e.g., Protecting Older Consumers 2021–2022,* Federal Trade Commission at 32 (Oct. 18, 2022), *available at https://www.ftc.gov/system/files/ftc_gov/pdf/P144400OlderConsumersReportFY22.pdf.*

[87] *See, e.g., Protecting Older Consumers 2022–2023,* Federal Trade Commission (Oct. 18, 2023) at 30–31, *available at https://www.ftc.gov/system/files/ftc_gov/pdf/p144400olderadultsreportoct2023.pdf.;* Federal Trade Commission, *What to Know About Romance Scams* (Aug. 2022), *available at https://consumer.ftc.gov/articles/what-know-about-romance-scams;* Federal Bureau of Investigation, *Scammers Defraud Victims of Millions of Dollars in New Trend in Romance Scams,* Alert No. I–091621–PSA (Sept. 16, 2021), *available at https://www.ic3.gov/Media/Y2021/PSA210916.*

[88] *See, e.g.,* AARP, *Grandparent Scams* (updated Sept. 30, 2022), *available at https://www.aarp.org/money/scams-fraud/info-2019/grandparent.html;* Federal Trade Commission, *Don't Open Your Door To Grandparent Scams,* Consumer Alert (Apr. 13, 2021), *available at https://consumer.ftc.gov/consumer-alerts/2021/04/dont-open-your-door-grandparent-scams.*

[89] Federal Trade Commission, Fraud Reports, Tableau Public, *available at https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/Subcategories* Over Time (filtered to display: Complaint Source—All; Timeframe—Quarters; Category—Imposter Scams; View—Table; Year-Quarter—2022, Q1 through 2023, Q4 selected; Subcategory—(All)) (last visited February 2024).

[90] Federal Trade Commission, Fraud Reports, Tableau Public, *available at https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/Subcategories* Over Time (filtered to display: Complaint Source—All; Timeframe—Quarters; Category—Imposter Scams; View—Table; Year-Quarter—2022, Q1 through 2023, Q4 selected; Subcategory—(All)) (last visited February 2024).

[91] *Protecting Older Consumers 2021–2022,* Federal Trade Commission (Oct. 18, 2022) at 32, *available at https://www.ftc.gov/system/files/ftc_gov/pdf/P144400OlderConsumersReportFY22.pdf.*

[92] *Id.* at 29 n.104.

[93] Protecting Older Consumers 2022–2023, Federal Trade Commission (Oct. 18, 2023) at 31, *available at https://www.ftc.gov/system/files/ftc_gov/pdf/p144400olderadultsreportoct2023.pdf.* While the reported harm is significant, the actual amount of harm is likely significantly higher due to underreporting by consumers. *Id.* at 39–40.

[94] ''Means and instrumentalities'' liability is a form of direct liability. *See, e.g., FTC* v. *Magui Publishers, Inc.,* No. Civ. 89–3818RSWL(GX), 1991 WL 90895, at *14 (C.D. Cal. Mar. 28, 1991), *aff'd,* 9 F.3d 1551 (9th Cir. 1993) (''One who places in the hands of another a means or instrumentalities to be used by another to deceive the public in violation of the FTC Act is directly liable for violating the Act.''); *Regina Corp.* v. *FTC,* 322 F.2d 765, 768 (3rd Cir. 1963). ''Means and instrumentalities'' is distinct from ''aiding and abetting'' liability and ''assisting and facilitating'' liability, both of which are secondary forms of liability and not available to the Commission in this rulemaking. *See* Andrew Smith, Multi-party liability, FTC Business Blog (Jan. 29, 2021), *https://www.ftc.gov/business-guidance/blog/2021/01/multi-party-liability* (noting various legal theories used by the Commission to impose liability on additional parties where the primary target's customers, vendors, or business partners were also engaged in misconduct). The Commission observes that it does not always allege knowledge in complaints seeking to hold parties liable for providing the means and instrumentalities used in a section 5 violation. *See, e.g.,* Amended Complaint for Permanent Injunction and Other Equitable Relief, *FTC* v. *James D. Noland, Jr., et al.,* case no. 2:20–cv–00047–DWL (D. Az. Jan. 17, 2020); Complaint for Permanent Injunction and Other Equitable Relief, *FTC* v. *Cyberspy Software, LLC, et al.,* case no. 6:08–cv–01872–GAP–GJK (M.D. Fl. Nov. 5, 2008); Complaint for Injunctive and Other Equitable Relief, *FTC* v. *Five Star Auto Club, Inc., et al.,* case no. 99–civ–1693 (S.D.N.Y. March 8, 1999).

[95] The Commission notes that if adopted as final, the SNPRM's proposed § 461.5 would not be the first trade regulation rule promulgated by the Commission that includes a ''knew or had reason to know'' requirement. For example, § 460.8 of the Labeling and Advertising of Home Insulation, R-value tolerances, prohibits non-manufacturers of home insulation to rely on R-value data provided by the manufacturer they ''know or should know'' is false or not based on proper tests. 16 CFR 460.8; *see also* 16 CFR 460.19(e) (non-manufacturers are liable only if they ''know or should know that the manufacturer does not have a reasonable basis for the claim''); 16 CFR 436.7(d) (franchise sellers must notify prospective franchisees of any material changes ''that the seller knows or should have known occurred'').

[96] NPRM, 87 FR at 62749.

[97] *See id.*

[98] These examples, which are the same as those articulated in connection with the prior rules (*see* Section III of the Statement of Basis and Purposes published elsewhere in this issue of the **Federal Register**), make clear that the use of voice cloning for purposes of impersonation is covered where its use satisfies the Rule's prohibitions. Audio deepfakes, including voice cloning, are generated, edited, or synthesized by artificial intelligence, or ''AI,'' to create fake audio that seems real. *See* Khanjani, et. al., *How Deep are the Fakes? Focusing on Audio Deepfake: A Survey, available at https://arxiv.org/ftp/arxiv/papers/2111/2111.14203.pdf.*

[99] 0033 NPRM Cmt.; ABA–IPL NPRM Cmt. at 2; Zoom NPRM Cmt. at 1.

[100] ABA–IPL NPRM Cmt. at 1–2; NetChoice NPRM Cmt. at 2; USTelecom NPRM Cmt. at 2; *see also* CTA, May 2023 Tr at 16; VON, May 2023 Tr at 36; ABA, May 2023 Tr at 39–40; INCOMPAS, May 2023 Tr at 42.

[101] NetChoice NPRM Cmt. at 2; CTA NPRM Cmt.; ASAE NPRM Cmt. 1; INTA NPRM Cmt.; Somos NPRM Cmt.; CTIA NPRM Cmt. at 7; USTelecom NPRM Cmt. at 2; ECA NPRM Cmt. at 3; ABA–IPL NPRM Cmt. at 3; Zoom NPRM Cmt. at 2; ABA NPRM Cmt. at 3; *see also* CTA, May 2023 Tr at 16; MacLeod, May 2023 Tr at 27; USTelecom, May 2023 Tr at 30; Chilson, May 2023 Tr at 34; VON, May 2023 Tr at 36; INCOMPAS, May 2023 Tr at 42, 44; NCTA, May 2023 Tr at 51–52.

[102] *See supra,* n.94, n.95.

[103] *See* 15 U.S.C. 6102(a)(2) (''acts or practices of entities or individuals that assist or facilitate deceptive telemarketing'').

[104] *In re Shell Oil Co.,* 128 F.T.C. 749, 764 (1999) (statement of Chairman Pitofsky and Commissioners Anthony and Thompson, citing *Regina Corp.* v. *FTC,* 322 F.2d 765, 768 (3rd Cir. 1963)). *See also, e.g., FTC* v. *Five-Star Auto Club,* 97 F. Supp. 2d 502 (S.D.N.Y. 2000); *FTC* v. *Magui Publishers, Inc.,* No. Civ. 89–3818RSWL(GX), 1991 WL 90895, at *14 (C.D. Cal. Mar. 28, 1991), *aff'd,* 9 F.3d 1551 (9th Cir. 1993); *supra* n.94.

[105] *C. Howard Hunt Pen Co.* v. *FTC,* 197 F.2d 273, 281 (3d Cir. 1952). *See also supra* n.94.

[106] In the context of an informal hearing, ''disputed'' and ''material'' are given the same meaning as in the standard for summary judgment. *See* Fed. Trade Comm'n, Initial notice of informal hearing; final notice of informal hearing; list of Hearing Participants; requests for submissions from Hearing Participants, 88 FR 85525, 85527 (Dec. 8, 2023), *https://www.federalregister.gov/documents/2023/12/08/2023-26946/negative-option-rule* (*citing* H.R. REP. No. 93–1107, 93d Cong., 2d Sess., *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 7702, 7728; *Anderson* v. *Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986); *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.,* 475 U.S. 574, 586 (1986)).

[107] Federal Trade Commission, Fraud Reports, Tableau Public, *available at https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/Subcategories* Over Time (filtered to display: Complaint Source—All; Timeframe—Years; Category—Imposter Scams; View—Table; Subcategory—(All)) (last visited February 2024).

[108] Federal Trade Commission, Fraud Reports, Tableau Public, *available at https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/Subcategories* Over Time (filtered to display: Complaint Source—All; Timeframe—Years; Category—Imposter Scams; View—Table; Subcategory—(All)) (last visited February 2024).

[109] Protecting Older Consumers 2022–2023, Federal Trade Commission (Oct. 18, 2023), *available at https://www.ftc.gov/system/files/ftc_gov/pdf/p144400olderadultsreportoct2023.pdf.*

[110] While such relief could also be obtained with an existing rule, such as the TSR if applicable, by no means do all impersonation scams implicate an existing rule, and there is no reason to expect them all to do so in the future.

[111] *See, e.g.,* Aaron Chalfin & Justin McCrary, *Criminal Deterrence: A Review of the Literature,* 55 J. Econ. Lit. 5 (2017), *https://doi.org/10.1257/jel.20141147* (reviewing twenty years of studies, albeit in criminal rather than civil context, and finding stronger evidence for deterrent effect of perceived risk of detection than for severity of punishment).

[112] *See supra* n.106 and accompanying text.

List of Subjects in 16 CFR Part 461

Consumer protection, Impersonation, Trade Practices.

Accordingly, the Federal Trade Commission proposes to amend 16 CFR part 461 as follows:

PART 461—RULE ON IMPERSONATION OF GOVERNMENT, BUSINESSES, AND INDIVIDUALS

■ 1. The authority citation for part 461 continues to read as follows:

Authority: 15 U.S.C. 41 through 58.

■ 2. Revise the heading of part 461 to read as set forth above.

■ 3. In § 461.1, add the definition of ''individual'' in alphabetical order to read as follows:

§ 461.1 Definitions.

* * * * *

Individual means a person, entity, or party, whether real or fictitious, other than those that constitute a business or government under this Part.

* * * * *

■ 4. Add § 461.4 to read as follows:

§ 461.4 Impersonation of Individuals Prohibited.

It is a violation of this part, and an unfair or deceptive act or practice to:

(a) materially and falsely pose as, directly or by implication, an individual, in or affecting commerce as commerce is defined in the Federal Trade Commission Act (15 U.S.C. 44); or

(b) materially misrepresent, directly or by implication, affiliation with, including endorsement or sponsorship by, an individual, in or affecting commerce as commerce is defined in the Federal Trade Commission Act (15 U.S.C. 44).

■ 5. Add § 461.5 to read as follows:

§ 461.5 Means and Instrumentalities: Provision of Goods or Services for Unlawful Impersonation Prohibited.

It is a violation of this part, and an unfair or deceptive act or practice to provide goods or services with knowledge or reason to know that those goods or services will be used to:

(a) materially and falsely pose as, directly or by implication, a government entity or officer thereof, a business or officer thereof, or an individual, in or affecting commerce as commerce is defined in the Federal Trade Commission Act (15 U.S.C. 44); or

(b) materially misrepresent, directly or by implication, affiliation with, including endorsement or sponsorship by, a government entity or officer thereof, a business or officer thereof, or an individual, in or affecting commerce as commerce is defined in the Federal Trade Commission Act (15 U.S.C. 44).

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2024–03793 Filed 2–29–24; 8:45 am]

BILLING CODE 6750–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 48

RIN 3038–AF37

Foreign Boards of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is proposing to amend its regulations to permit a foreign board of trade (FBOT) registered with the Commission to provide direct access to its electronic trading and order matching system to an identified member or other participant located in the United States and registered with the Commission as an introducing broker (IB) for submission of customer orders to the FBOT's trading system for execution. The Commission is also proposing to establish a procedure for an FBOT to request revocation of its registration, and to remove certain outdated references to ''existing no-action relief.''

DATES: Comments must be received on or before April 22, 2024.

ADDRESSES: You may submit comments, identified by ''Foreign Boards of Trade'' and RIN 3038–AF37, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instruction as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English or, if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this proposed rule will be retained in the public comment file and will be considered as required under the Administrative Procedure Act (APA) and other applicable laws, and may be accessible under FOIA.

FOR FURTHER INFORMATION CONTACT: Alexandros Stamoulis, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, (646) 746–9792, *astamoulis@cftc.gov,* 290 Broadway, 6th Floor, New York, NY 10007; Roger Smith, Associate Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5344, *rsmith@cftc.gov,* 77 West Jackson Blvd., Suite 800, Chicago, IL 60604; Maura Dundon, Special Counsel, (202) 418–5286, *mdundon@cftc.gov,* Commodity Futures Trading Commission, Division of Market Oversight, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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I. Background

Under part 48 of the Commission's regulations, an FBOT must be registered with the Commission in order to provide its members or other participants located in the United States with direct access to its electronic trading and order matching system.[2] Part 48 is authorized by section 738 of the Dodd-Frank Act, which amended section 4(b) of the Commodity Exchange Act (CEA), to provide that the Commission may adopt rules and regulations requiring FBOTs that wish to provide U.S. persons with direct access to register with the Commission.[3]

[1] 17 CFR 145.9. The Commission's regulations referred to in this release are found at 17 CFR chapter I (2022), available on the Commission's website at *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm.*

[2] *See* Registration of Foreign Boards of Trade, Final Rule, 76 FR 80674 (Dec. 23, 2011); 17 CFR part 48. ''Direct access'' is defined as an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade. CEA section 4(b)(1)(A), 7 U.S.C. 6(b)(1)(A); 17 CFR 48.2(c).

[3] *See* Sec. 738, Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203,

Continued

Prior to enactment of the part 48 FBOT registration procedures in 2011, FBOTs relied on no-action letters that were requested by the FBOT and granted by Commission staff in order to provide direct access to U.S. persons.[4]

Part 48 provides the procedures, requirements, and conditions to be met by FBOTs that seek to provide their members and other participants in the U.S. with direct access to the FBOT's trade matching system. The regulations set forth, among other things, procedures an FBOT must follow in applying for registration, requirements that an FBOT must meet in order to obtain registration, conditions that an FBOT must satisfy on a continuing basis upon obtaining registration, and provisions for the termination of registration.

The Commission has not amended part 48 since it was first promulgated in 2011. Based on the Commission's experience engaging with registered FBOTs and applying part 48 over the ensuing years, the Commission is proposing certain amendments to the regulation. The proposed amendments are limited in scope and would not change the overall registration structure or framework of part 48. Rather, the proposal would amend § 48.4 to broaden the types of intermediaries eligible for direct access for submission of customer orders to the FBOT to include IBs registered with the Commission as such and located in the United States.[5] An IB is generally defined as an individual or organization that solicits or accepts orders to buy or sell futures contracts, commodity options, retail off-exchange forex or commodity contracts, or swaps, but does not accept money or other assets from customers to support these orders.[6] Currently, § 48.4 only includes certain futures commission merchants (FCMs), commodity pool operators (CPOs), and commodity trading advisors (CTAs) as intermediaries that are eligible for entering orders on behalf of customers or commodity pools (in the case of CPOs) via direct access on a registered FBOT.

In addition, the proposed amendments would amend § 48.9 to provide registered FBOTs with a procedure to request revocation of their FBOT registration. Further, the Commission proposes to delete § 48.6, which provides for an alternate registration procedure for FBOT's acting under the preexisting staff no-action letter process, because such no-action letter process and no-action letters are no longer in effect.

II. Proposed Amendments

A. Section 48.4—Registration Eligibility and Scope

The Commission proposes to amend § 48.4(b) to permit FBOTs to provide direct access to eligible IBs to enter orders directly into an FBOT's trading and order matching system on behalf of U.S. customers.[7] Section 48.4(b) identifies the types of members or other participants located in the U.S. that may enter orders directly into the trading and order matching system of a registered FBOT, and the types of accounts for which orders may be submitted by such members or other participants. In this regard, the types of members or other participants currently identified in § 48.4(b) represent the types of members or other participants that were trading via direct access on FBOTs that operated in reliance on CFTC staff no-action letters at the time part 48 was promulgated.[8] Specifically, § 48.4(b)(1) provides that any member or other participant located in the U.S. may enter orders for their proprietary accounts.[9] Further, § 48.4(b)(2) provides that registered FCMs may submit orders on behalf of their customers. Section 48.4(b)(3) permits certain CPOs to submit orders on behalf of U.S. commodity pools and certain CTAs to submit orders on behalf of U.S. customers provided, however, all trades by the CPO or CTA effected through submission of such orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10.[10] The Commission proposes to amend § 48.4(b), by inserting a new paragraph (b)(4) to provide that eligible IBs may submit orders on behalf of their customers—subject to the same condition now in place for CPOs and CTAs submitting orders on behalf of U.S. commodity pools or U.S. customers: all trades effected through submission of U.S. customer orders must be guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10. The Commission also proposes to amend paragraph (b)(3) to insert the words ''registered as such'' following ''futures commission merchant'' to clarify that the reference is limited to FCMs registered with the Commission as such.[11]

Direct access is defined in the CEA and part 48 of the Commission's regulations to mean an explicit grant of authority by an FBOT to an identified member or other participant located in the U.S. to enter trades directly into the

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124 Stat. 1376, 1726–1728 (2010) (*codified at* 7 U.S.C. 6(b)).

[4] *See* 76 FR 80674 at 80674–80675.

[5] Intermediaries are entities that act on behalf of another person with respect to a trade. They are generally required to register with the Commission and, depending on the nature of their activities, may be subject to various financial, disclosure, reporting, and recordkeeping requirements.

[6] IB is defined, subject to certain exclusions and additions, in CEA section 1a(31) as any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant) (i) who (I) is engaged in soliciting or in accepting orders for (aa) the purchase or sale of any commodity for future delivery, security futures product, or swap; (bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); (cc) any commodity option authorized under section 4c; or (dd) any leverage transaction authorized under section 19; and (II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or (ii) who is registered with the Commission as an IB. 7 U.S.C. 1a(31). IB is further defined, subject to certain exclusions and additions, in Commission regulation 1.3(mm) as (1) Any person who, for compensation or profit, whether direct or indirect: (i) Is engaged in soliciting or in accepting orders (other than in a clerical capacity) for the purchase or sale of any commodity for future delivery, security futures product, or swap; any agreement, contract or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the CEA; any commodity option transaction authorized under section 4c; or any leverage transaction authorized under section 19; or who is registered with the Commission as an IB; and (ii) Does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. 17 CFR 1.3(mm). IBs are subject to registration with the Commission under CEA section 4d(g) and Commission regulation 3.4(a). 7 U.S.C. 6d(g) and 17 CFR 3.4(a).

[7] The term ''eligible IB'' is used in this release to mean an IB that is located in the United States and registered with the Commission as an IB. Direct access, as defined in the CEA and part 48, refers explicitly to members or other participants of an FBOT that are located in the United States. *See* footnote 2, *supra.* For purposes of this rulemaking and as used herein, the terms ''U.S. customer'' and ''United States customer'' refer to customers located in the United States, its territories or its possessions.

[8] *See* footnote 14, *infra,* and accompanying text.

[9] Under § 48.2(l), member or other participant is defined as a member or other participant of an FBOT and any affiliate thereof that has been granted direct access by the FBOT. 17 CFR 48.2(l). Proprietary account is defined in § 1.3, 17 CFR 1.3.

[10] A § 30.10 exemptive order permits firms subject to regulation by a foreign regulator to conduct business from locations outside of the U.S. for U.S. persons on FBOTs without registering as FCMs, based upon the firm's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the CEA. Used herein, U.S. commodity pool refers to a commodity pool that does not meet the criteria set forth in § 3.10(c)(5)(iii)(A) through (F), 17 CFR 3.10(c)(5)(iii)(A) through (F).

[11] The proposed addition of the words ''registered as such'' here is intended as a technical change rather than a substantive change; *i.e.,* that the reference is intended to refer to registered FCMs is already implied by the subsequent clause ''or a firm exempt from such registration . . .''

trade matching engine of the FBOT.[12] This means that the FBOT itself, as opposed to its members or participants, has identified and permitted a member or participant to enter trades directly into the FBOT's order matching and trade entry system from the United States.[13] For example, a registered FBOT may authorize its member firms or other participants eligible to handle U.S. customer orders to enter orders on behalf of their customers in the U.S. or to otherwise permit their customers in the U.S. to access the trading system using the member firm's or participant's identifier and grant of authority. In such cases the FBOT permits an identified exchange member or other participant to allow their customers in the U.S., who have not been granted explicit authority by the FBOT as a member or other participant of the FBOT, to have access to the exchange's trading systems, subject to a guarantee from an exchange participant firm. The proposed amendment to § 48.4(b) would permit registered FBOTs to grant explicit authority to eligible IBs to act in such capacity, provided that all trades effected by the IB through submission of U.S. customer orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10.

In promulgating § 48.4(b) the Commission set forth criteria based on then-existing staff no-action letters for FBOTs, noting that persons that would be permitted by the FBOT to trade by direct access from the U.S. pursuant to the registration rules would be the types of persons that are currently able to trade by direct access pursuant to staff issued no-action relief letters.[14] However, the referenced staff no-action letters did not include any provision for IBs. In the proposing release for part 48, the Commission requested comments concerning additional entities that should be eligible for direct access to the trading and order matching systems of FBOTs from the U.S.[15] At that time, no comments were received in response to that request and the Commission adopted § 48.4(b) as proposed and without direct comment.

The Commission believes that permitting eligible IBs to submit customer orders via direct access to FBOTs may be beneficial to market participants and affected markets. Designated contract markets (DCMs) may provide for IBs to act as executing brokers for customer accounts that in turn use FCM clearing members to whom executed trades are given up for clearing and through which such customer accounts are carried, typically in an omnibus customer account or a fully disclosed basis. FBOTs may similarly permit IBs located outside of the United States to enter trades directly into the trade matching system of the FBOT on behalf of their customer accounts. The proposed amendment to § 48.4 would permit registered IBs located in the U.S. to act in a comparable capacity on registered FBOTs in cases where an FBOT will be providing direct access to the IB for the purpose of submitting customer orders for execution. The Commission preliminarily believes that allowing eligible IBs to have direct access to registered FBOTs to execute transactions on behalf of their clients may provide market participants that wish to trade in foreign futures contracts with greater choice in brokers and broker arrangements, and may increase competition among firms offering execution brokerage services to customers on registered FBOTs. The Commission furthermore preliminarily believes that affording greater choice in brokers and broker arrangements would not undermine or otherwise adversely affect customer protections available to U.S. customers as their trades would be guaranteed by a registered FCM or firm exempt from FCM registration under § 30.10,[16] and would be subject to required risk disclosures relating to foreign futures transactions.[17]

Request for Comment

The Commission requests comments on all aspects of the proposal to amend § 48.4(b) to permit registered FBOTs to provide direct access to eligible IBs to enter orders directly into the FBOT's trading and order matching system on behalf of customers, provided that all trades effected through submission of U.S. customer orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10. In particular, the Commission requests comment on the following questions.

(1) Would extending direct access eligibility to eligible IBs for the purpose of submitting customer orders potentially result in any unintended consequences? Is there any reason the Commission should not amend § 48.4 to extend direct access eligibility to eligible IBs for the purpose of submitting customer orders? Are there other issues the Commission should address in order to ensure that FBOTs providing direct access to IBs under proposed § 48.4(b)(4) does not harm U.S. markets or increase risk to the U.S. economy?

(2) The proposed regulation would require that an FCM registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 act as a clearing firm and guarantee, without limitation, all trades

[12] CEA section 4(b)(1)(A), 7 U.S.C. 6(b)(1)(A); 17 CFR 48.2(c).

[13] Conversely, a person located in the U.S. who accesses an FBOT through an intermediary (whether such intermediary is located in the United States or not) and without an explicit grant of authority by the FBOT (*i.e.,* such person is not an identified member or other participant of the FBOT) would not meet the definition of ''direct access'' for purposes of part 48. *See, e.g.,* 76 FR 80674 at 80688.

[14] Registration of Foreign Boards of Trade, Notice of Proposed Rulemaking, 88 FR 61432, 70977 (Nov. 19, 2010). *See also,* Q & A—Final Rule on Registration of Foreign Boards of Trade, What entities will be eligible to trade via direct access from the U.S.?, *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/fbot_qa_final.pdf* (''[t]he registration regulations identify the types of entities to which a registered FBOT could grant direct access: identified members and other participants that trade for their proprietary accounts; FCMs that submit orders on behalf of U.S. customers; and CPOs or CTAs, or entities exempt from such registration, that submit orders on behalf of U.S. pools or for accounts of U.S. customers for which they have discretionary authority. This is consistent with the existing no-action relief.''); *and* Fact Sheet, Final Rules Regarding the Registration of Foreign Boards of Trade, *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/fbot_factsheet_final.pdf.*

[15] 88 FR 61432 at 70977.

[16] Including the proposed provision relating to the guarantee of U.S. customer trades in proposed new § 48.4(b)(4) would ensure that U.S. customer trades executed by eligible IBs via direct access are guaranteed by a firm that is registered as an FCM or exempt from FCM registration under § 30.10. In so doing, the proposed rule would act to reinforce adherence with part 30, insofar as part 30 generally requires intermediaries holding funds of U.S. customers in connection with the offer or sale of foreign futures and options contracts to be registered as FCMs or exempt from FCM registration under § 30.10. Part 30 of the Commission's regulations governs the offer and sale of foreign futures and options contracts to customers located in the United States. These regulations are designed to carry out Congress's intent that foreign futures and foreign options products offered or sold in the U.S. be subject to regulatory safeguards comparable to those applicable to domestic transactions. Section 30.4 of the Commission's regulations requires that in order to accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure transactions conducted by U.S. persons on an FBOT, a person must be registered as an FCM. *See* 17 CFR 30.4(a). The Commission may grant and has granted exemptions to this requirement to register as an FCM based on petitions filed pursuant to 17 CFR 30.10. *See* footnote 10, *supra.*

[17] Section 30.6 of the Commission's regulations requires FCMs and IBs to provide a statement to customers disclosing the risks of trading foreign futures and options outside the United States. 17 CFR 30.6. This requirement also applies to exempt foreign IBs, CPOs, and CTAs. 17 CFR 30.5(c). Petitions for exemptive relief under § 30.10 for firms seeking an exemption from FCM registration must demonstrate that such firms are subject to a comparable regulatory program that includes, among other elements, minimum sales practice standards, including disclosure of the risks of futures and options transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law. 17 CFR part 30, appendix A, Sales Practice Standards.

of the IB effected through submission of orders for U.S. customers to the trading system.

(a) Is this condition appropriate? Why or why not?

(b) Does ''act as a clearing firm and guarantee, without limitation, all trades of the introducing broker'' effectively translate to and encapsulate the various comparable foreign regimes and market structures of FBOTs and their clearing organizations? Are there relevant considerations relating to the clearing and guarantee of IB trades that differ from that of CPO and CTA trades?

(c) How could this condition impact trades submitted by an IB on behalf of a self-clearing firm? Do direct clearing members of FBOT clearing organizations use IBs to submit their orders to FBOTs? If so, does this proposed condition raise any operational issues, additional costs, or other issues for such direct clearing members (*e.g.,* relating to portfolio margining, risk management, or other)?

(3) Should the Commission instead require all U.S. customer trades entered by an IB via direct access on a registered FBOT to be guaranteed by a registered FCM (but not extend the condition to firms exempt from FCM registration under § 30.10 to carry such trades)? Would permitting firms exempt from FCM registration under § 30.10 to carry U.S. customer trades entered by an IB via direct access on a registered FBOT raise any issues with anti-money laundering (AML) requirements under the Bank Secrecy Act and Commission regulations? What would be the effects of requiring such trades to be carried exclusively by clearing members that are registered with the Commission as FCMs?

(4) Are there additional registration requirements under § 48.7 that the Commission should consider for FBOTs that provide direct access to IBs under proposed § 48.4(b)(4)?

(5) In addition to the information that FBOTs provide to the Commission on an ongoing basis under § 48.8, is there additional information that the Commission should receive from FBOTs that provide direct access to IBs under proposed § 48.4(b)(4), and if so, why? For example, is there additional information that FBOTs could provide to assist the Commission in identifying, evaluating, and addressing situations that may adversely impact consumers, IBs, market participants, and financial markets? Further, please describe whether this information should be provided on a periodic basis (*i.e.,* quarterly or monthly), or event-driven basis (*i.e.,* after a disciplinary action).

B. Section 48.8—Conditions of Registration

The Commission is proposing conforming amendments that will include eligible IBs in §§ 48.8(a)(4)(ii), 48.8(a)(5)(i) and 48.8(a)(5)(iii) alongside FCMs, CPOs and CTAs.

Section 48.8(a)(4)(ii) requires all orders transmitted via direct access and pursuant to an FBOT's registration to be for a member's or other participant's proprietary trading account unless transmitted by a registered FCM, CPO or CTA (or exempt CPO or CTA). The Commission proposes to include IBs in this section along with FCMs, CPOs and CTAs, to conform with the proposed changes to § 48.4(b) that would allow eligible IBs to transmit orders via direct access on behalf of the accounts of their customers. The Commission also proposes to add the words ''registered as such'' following the final reference to ''futures commission merchant'' in § 48.8(a)(4)(ii) to conform to the proposed amendment to § 48.4(b)(3).[18]

Section 48.8(a)(5)(i) provides that a registered FBOT must require each current and prospective member or other participant granted direct access and not registered with the Commission as an FCM, CPO or CTA to agree to and submit to the jurisdiction of the Commission with respect to activities conducted pursuant to the FBOT's registration. Registered FCMs, CPOs and CTAs are excluded from this requirement because they are otherwise subject to the jurisdiction of the Commission as Commission registrants. Registered IBs are likewise subject to the jurisdiction of the Commission as registrants and the Commission therefore proposes to include IBs alongside FCMs, CPOs and CTAs in § 48.8(a)(5)(i).

Section 48.8(a)(5)(iii) provides that a registered FBOT, its clearing organization, and each current and prospective member or other participant granted direct access that is not registered with the Commission as an FCM, CPO or CTA must maintain with the FBOT written representations stating that such entity will provide prompt access to books, records, and premises upon the request of the Commission, U.S. Department of Justice and, if appropriate, the National Futures Association (NFA). Registered FCMs, CPOs and CTAs are excluded from this requirement because they are otherwise required to provide such access to books, records, and premises as Commission registrants and, where applicable, NFA members.[19] Registered IBs, as Commission registrants and NFA members, are likewise required to provide such access to books, records, and premises by the Commission, U.S. Department of Justice, and NFA, and the Commission therefore proposes to include IBs alongside FCMs, CPOs and CTAs in § 48.8(a)(5)(iii).

Request for Comment

The Commission requests comments on the proposed conforming changes to §§ 48.8(a)(4)(ii), 48.8(a)(5)(i) and 48.8(a)(5)(iii).

C. Section 48.9—Revocation of Registration

The Commission proposes to amend § 48.9 to establish a procedure for FBOTs to request voluntary revocation of registration. Section 48.9 addresses certain events which could lead the Commission to revoke an FBOT's registration, including the failure to satisfy registration requirements or conditions, and certain other specified events.[20] However, part 48 presently does not contain any provisions for an FBOT to request voluntary revocation of its registration. In order to allow registered FBOTs to more easily ascertain the steps required to request revocation, the Commission proposes to amend § 48.9(b) (''Other Events that Could Result in Revocation'') by adding a new paragraph (b)(5). New § 48.9(b)(5) would clarify that the Commission may revoke an FBOT's registration in response to a voluntary request by an FBOT to do so, and provide that an FBOT can make such request via email to the Commission.

Request for Comment

The Commission requests comments on all aspects of the proposed amendment to § 48.9 to establish a procedure for FBOTs to request voluntary revocation of registration.

D. Section 48.6—Foreign Boards of Trade Providing Direct Access Pursuant to Existing No-Action Relief

Section 48.6 provides for a limited application procedure for FBOTs that had been operating under existing staff no-action letters and FBOTs that had submitted a complete application for a staff no-action letter that was pending as of the effective date of part 48. Those limited application provisions are no longer applicable because all FBOTs

[18] *See* footnote 11, *supra,* and accompanying text.

[19] Subpart C of part 170 of the Commission's regulations provides for certain exceptions to the general requirement that Commission-registered FCMs and CTAs must become NFA members. *See* 17 CFR 170.15 and 170.17.

[20] *See* 17 CFR 48.9.

with previously existing staff no-action letters have been registered under part 48 and all such no-action letters have been revoked. Accordingly, the Commission proposes to delete § 48.6. As a conforming amendment the Commission also proposes to delete § 48.2(h) (definition of ''existing no-action relief'') as that definition will no longer be applicable or necessary once existing § 48.6 is removed.

Request for Comment

The Commission requests comments on all aspects of the proposal to delete §§ 48.6 and 48.2(h).

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis with respect to such impact.[21] The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[22] The proposed amendments to part 48 would impact FBOTs. The Commission has previously determined that FBOTs are not small entities for purposes of the RFA.[23]

The proposed amendments to part 48 would also impact eligible IBs by providing them with the potential to gain direct access to FBOTs that incorporate the new regulatory provisions allowing such IBs direct access. The Commission has previously established that IBs may in some cases be deemed ''small entities'' for the purposes of the RFA.[24] However, the proposed rules do not impose any new burden on eligible IBs. Instead, the proposal would remove a regulatory barrier preventing these small entities from accessing FBOTs. Accordingly, the Commission believes that the regulation will be less burdensome to small-entity eligible IBs and will not impose any additional costs on them.

Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities.

[21] 5 U.S.C. 601 *et seq.*

[22] See Policy Statement and Establishment of ''Small Entities'' for purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).

[23] 76 FR at 80698.

[24] 85 FR 78718, 78733 (Dec. 7, 2020).

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA),[25] imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any ''collection of information,'' [26] as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (OMB).[27] The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by Federal agencies, to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the Federal Government.[28] The PRA applies to all information, ''regardless of form or format,'' whenever the government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.[29]

This notice of proposed rulemaking (NPRM) proposes amendments to regulations that contain collections of information for which the Commission has previously received a control number from OMB: 3038–0101, Registration of Foreign Boards of Trade (17 CFR part 48).[30] This collection addresses the information collection requirements associated with part 48's registration requirement and related registration procedures and conditions that apply to FBOTs that wish to provide direct access to their electronic trading and order matching systems. The NPRM would provide a process for FBOTs to request voluntary revocation of their registration, allow eligible IBs to act as direct access participants, and remove an outdated reference to ''no action relief.''

The Commission believes that these proposed amendments do not contain any new collections of information and would not increase the burden associated with the information collections under part 48. While the proposed amendments establish a new process for FBOTs to submit requests for revocation of their registration, the proposed regulations allow FBOTs to submit their requests electronically via email to the Commission and do not mandate any specific form or format for such requests. Accordingly, this new submission method would not constitute a collection of information under the PRA. In addition, the proposed amendments do not affect the provisions of part 48 covered in the current PRA approval (§ 48.8 (periodic data submissions to the Commission), § 48.9 (demonstration of compliance); and § 48.10 (listing additional futures and options contracts)). Accordingly, the Commission is retaining its existing estimates for the burden associated with the information collections under OMB Collection 3038–0101. The Commission requests public comment on this determination.

[25] 44 U.S.C. 3501 *et seq.*

[26] *See* 44 U.S.C. 3502(3)(A).

[27] *See* 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).

[28] *See* 44 U.S.C. 3501.

[29] *See* 44 U.S.C. 3502(3).

[30] The Commission's most recent burden estimates for this collection are available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202301-3038-001.*

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA [31] requires the Commission to ''consider the costs and benefits'' of its actions before promulgating a regulation under the CEA or issuing certain orders. CEA section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the CEA section 15(a) factors.

The Commission has endeavored to assess the expected costs and benefits of the proposed amendments in quantitative terms, including Paperwork Reduction Act (PRA)-related costs, where practicable. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable proposed amendments in qualitative terms.

The Commission notes that this consideration of costs and benefits is based on, inter alia, its understanding that the derivatives markets regulated by the Commission function internationally, with (1) transactions

[31] 7 U.S.C. 19(a).

that involve entities organized in the United States occurring across different international jurisdictions, (2) some entities organized outside of the United States that are prospective Commission registrants, and (3) some entities that typically operate both within and outside the United States, and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the proposed regulations on all relevant derivatives activity, whether based on their actual occurrence in the United States or on their connection with activities in, or effect on, U.S. commerce.[32]

In the following consideration of costs and benefits, the Commission first identifies and discusses the benefits and costs attributable to the proposed rule amendments. The Commission, where applicable, then considers the costs and benefits of the proposed rule amendments in light of the five public interest considerations set out in § 15(a) of the CEA.

2. Proposed Regulations

The Commission is proposing to amend certain rules in part 48 of its regulations relating to FBOTs. The Commission identifies the costs and benefits of the proposed amendments relative to the baseline of the regulatory status quo. In particular, the baseline against which the Commission considers the costs and benefits of these proposed rule amendments is the statutory and regulatory requirements of the CEA and Commission regulations now in effect, in particular CEA section 4(b) and part 48 of the Commission's regulations.

• Proposed Amendments to § 48.6

The Commission proposes to delete § 48.6, which provides for an alternate registration procedure for FBOTs acting under the preexisting staff no-action letter process, because such no-action letter process and no-action letters are no longer in effect. Removal of § 48.6 and elimination of the alternate registration procedure will not increase costs to FBOTs because § 48.6 and the alternate registration procedure are already in effect null.

• Proposed Amendments to § 48.9

The Commission proposes to amend § 48.9 to establish a procedure for FBOTs to request voluntary revocation of registration. This amendment would not impose a new requirement for FBOTs. The baseline is the current practice of the Commission, whereby requests for voluntary revocation are processed on an ad-hoc basis. The primary benefit will be to allow registrants to more easily ascertain the steps required to request revocation. The amendments are not expected to increase costs to registered FBOTs compared to the status quo.

• Proposed Amendments to § 48.4 and Conforming Amendments to § 48.8

The proposed amendments to § 48.4 and conforming amendments to § 48.8 would permit a registered FBOT to provide direct access to its electronic trading and order matching system to an identified member or other participant located in the U.S. and registered with the Commission as an IB for submission of customer orders to the FBOT's trading system for execution, provided that all trades effected through submission of U.S. customer orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10.

There are presently 24 FBOTs registered with the Commission. Under the current rules, eligible intermediaries permitted direct access on registered FBOTs for purposes of entering trades on behalf of non-proprietary client accounts include certain FCMs, CTAs, and CPOs. The proposed amendments would add eligible IBs to the existing list of eligible intermediaries. Similar to trades submitted by CTAs and CPOs via direct access, the trades executed by eligible IBs on behalf of customers located in the U.S. would be required to be guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10. IBs specialize in soliciting and executing orders for their clients. The field of trade execution is continuously evolving with technological advances, and has helped bring down execution costs. As of January 2024, the following number of CTAs, CPOs, and IBs were registered with the Commission as shown on table 1.[33]

TABLE 1

CTAs [1]	1,262
CPOs [1]	1,190
IBs	937
FCMs	60
Swap Dealers	106

[1] These categories are not mutually exclusive, *i.e.,* a CPO may also be registered as a CTA.

Table 1 above shows that the number of IBs is more than a quarter of all CFTC-registered intermediaries. The Commission does not know how many FBOTs would provide direct access to eligible IBs and how many eligible IBs would become direct access members or participants of registered FBOTs. There could also be new IB entrants that are granted direct access to registered FBOTs. However, by permitting FBOTs to provide direct access to eligible IBs, the proposed amendments could lead to a significant increase in the number of choices for U.S. customers with respect to execution of trades on FBOTs.

Although the Commission lacks the data and information to quantitatively estimate the costs and benefits of permitting IBs located in the U.S. to have direct access to registered FBOTs, it has endeavored to assess the expected costs and benefits of the proposal in qualitative terms. The lack of data and information to estimate costs is attributable in part to uncertainty regarding how FBOTs would choose to respond to the proposed amendments to part 48 and how IBs located in the U.S. would choose to respond to potential new opportunities to participate on registered FBOTs. The Commission specifically requests data and information from IBs located in the U.S., registered FBOTs, market participants, and other commenters to allow it to better estimate the costs and benefits of the proposal.

The baseline is the status quo in which § 48.4 permits FBOTs to provide direct access to certain FCMs, CPOs and CTAs for purposes of transmission of orders for certain client accounts. Furthermore, foreign IBs not located in the U.S. may have similar arrangements on FBOTs whereby their customer orders are transmitted to an FBOT.[34] IBs are not included in § 48.4 as intermediaries eligible to have direct access and transmit trades on behalf of customers. As such, registered FBOTs currently do not provide direct access to IBs located in the United States to enter orders on behalf of their customers.

Relative to the baseline, the primary effect of the proposed amendment to § 48.4 would be to allow registered FBOTs to provide direct access to eligible IBs in order to transmit orders of U.S. customers. This could promote competition among execution-only brokers on registered FBOTs. There may be advantages to customers from having additional choices in brokers and

[32] *See, e.g., 7* U.S.C. 2(i).

[33] NFA website, *https://www.nfa.futures.org/registration-membership/membership-and-directories.html.*

[34] The definition of ''direct access'' does not include identified members or other participants of an FBOT that are located outside of the United States. *See* 17 CFR 48.2(c).

brokerage arrangements to trade foreign futures on registered FBOTs—for example, lower trading costs or the use of advantageous proprietary execution algorithms developed by such IBs.

From the standpoint of registered FBOTs, allowing eligible IBs to become direct access participants would open up potential new distribution channels that could lead to additional trading volume. This in turn could improve the viability of some traded instruments. Similarly, eligible IBs would be able to pursue new business models and/or expand existing business models onto new foreign markets.

FBOTs that decide to provide direct access to eligible IBs and that do not already have necessary structures in place to do so may incur certain costs relating to, for example, modification of rules, procedures and/or systems to enable direct access to eligible IBs to submit customer orders to the FBOT's trading system for execution. The Commission is interested in receiving public comments regarding these and any other costs associated with eligible IBs having direct access to registered FBOTs. In this regard, the Commission requests public comment on any potential costs of the proposal, including comments relating to questions 6 through 9 in the ''request for comment'' section below.

- Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of the amendments to part 48 with respect to the following factors: protection of market participants and the public; efficiency, competitiveness, and financial integrity of markets; price discovery; sound risk management practices; and other public interest considerations.

(i) Protection of Market Participants and the Public

The proposed changes to part 48 would not affect the basic protection for customers with respect to their foreign futures transactions. Under the proposed rule, U.S. customer assets are required to be maintained by registered FCMs or similar entities exempt from FCM registration pursuant to § 30.10.

(ii) Efficiency, Competitiveness, and Financial Integrity of Markets

The current part 48 treats eligible IBs differently from certain FCMs, CTAs and CPOs located in the U.S. in regard to their ability to be granted direct access to registered FBOTs for the purpose of executing third-party client trades. Similarly, intermediaries located outside of the United States may, under the status quo, offer execution services to U.S. and non-U.S. customers on registered FBOTs. The proposed change would permit eligible IBs to offer competing execution services on registered FBOTs. Alternatively, to the extent that clientele for these IBs is distinct from other kinds of intermediaries, the rule change may enable them to access new foreign futures markets. Greater competition among introducing brokers and additional and new types of customers participating in affected markets may lead to increased market efficiencies and greater financial integrity. Furthermore, that trades of U.S. customers must be guaranteed by registered FCMs or comparable foreign firms promotes the financial integrity of affected markets by ensuring that intermediaries handling U.S. customer funds are subject to certain regulatory safeguards.

(iii) Price Discovery

There is a potential for the proposed changes to part 48 to positively affect price discovery in futures markets. Participation of eligible IBs as direct access members may lead to increased participation and volume on registered FBOTs, in particular during hours when U.S. brokers are more active than foreign brokers.

(iv) Risk Management Practices

As noted above, the proposed changes will not affect how customer assets are treated. However, registered FCMs and firms exempt from FCM registration pursuant to § 30.10 may need to expand their risk mitigation processes to ensure that they have robust processes for managing the risk associated with eligible IBs executing trades on registered FBOTs via direct access.

(v) Other Public Interest Considerations

As noted above, the proposed changes may enable new and distinct kinds of market participants to access registered FBOTs, which could help improve liquidity and reduce fragmentation in affected markets.

Request for Comment

The Commission invites public comment on all aspects of its cost benefit considerations, including the discussion of the section 15(a) factors and the identification and assessment of any costs or benefits not discussed herein. Commenters may also suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA and would provide a more appropriate cost-benefit profile. Commenters are requested to provide data and any other information or statistics to support their position. To the extent commenters believe that the costs or benefits of any aspect of the proposed rules are reasonably quantifiable, the Commission requests that they provide data and any other information or statistics to assist the Commission in quantification. In particular, the Commission requests comment on the following questions:

(6) What is the experience of FCMs, CTAs and CPOs regarding the magnitude of benefits to their customers from their direct access participation on FBOTs?

(7) Have there been instances of harm to customers/clients from FCMs, CTAs and/or CPOs participating as direct access members of registered FBOTs?

(8) Would direct access trading by eligible IBs on registered FBOTs pose substantive challenges and/or costs to FCMs or firms exempt from FCM registration under § 30.10 who carry or would carry the accounts of trades executed by such IBs?

(9) Are there additional costs or benefits from the proposed rule change that have not been discussed?

List of Subjects in 17 CFR Part 48

Registration of foreign boards of trade.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 48 as follows:

PART 48—REGISTRATION OF FOREIGN BOARDS OF TRADE

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

Authority: 7 U.S.C. 5, 6 and 12a, unless otherwise noted.

§ 48.2 [Amended]

■ 2. In § 48.2 remove paragraph (h) and redesignate paragraphs (i) through (l), as paragraphs (h) through (k), respectively.

■ 3. In § 48.4 revise paragraph (b) to read as follows:

§ 48.4 Registration eligibility and scope.

* * * * *

(b) A foreign board of trade may apply for registration under this part in order to permit the members and other participants of the foreign board of trade that are located in the United States to enter trades directly into the trading and order matching system of the foreign board of trade, to the extent that such members or other participants are:

(1) Entering orders for the member's or other participant's proprietary accounts;

(2) Registered with the Commission as futures commission merchants and are

submitting customer orders to the trading system for execution;

(3) Registered with the Commission as a commodity pool operator or commodity trading advisor, or are exempt from such registration pursuant to § 4.13 or § 4.14 of this chapter, and are submitting orders for execution on behalf of a United States pool that the member or other participant operates or an account of a United States customer for which the member or other participant has discretionary authority, respectively, provided that a futures commission merchant registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as clearing firm and guarantees, without limitation, all such trades of the commodity pool operator or commodity trading advisor effected through submission of orders to the trading system; or

(4) Registered with the Commission as introducing brokers and are submitting customer orders to the trading system for execution, provided that a futures commission merchant registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as a clearing firm and guarantees, without limitation, all trades of the introducing broker effected through submission of orders for United States customers to the trading system.

* * * * *

§ 48.6 [Removed and Reserved]

■ 4. Remove and reserve § 48.6.

■ 5. In § 48.8 revise paragraphs (a)(4)(ii) and (a)(5)(i) and (iii) to read as follows:

§ 48.8 Conditions of registration.

* * * * *

(a) * * *

(4) * * *

(ii) All orders that are transmitted to the foreign board of trade's trading system by a foreign board of trade's identified member or other participant that is operating pursuant to the foreign board of trade's registration will be solely for the member's or trading participant's own account unless such member or other participant is registered with the Commission as a futures commission merchant or such member or other participant is registered with the Commission as an introducing broker, commodity pool operator or commodity trading advisor, or is exempt from registration as a commodity pool operator or commodity trading advisor pursuant to § 4.13 or § 4.14 of this chapter, provided that a futures commission merchant registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as clearing firm and guarantees, without limitation, all trades of the introducing broker, commodity pool operator or commodity trading advisor effected through submission of orders for United States pools or customers to the trading system.

(5) * * *

(i) Prior to operating pursuant to registration under this part and on a continuing basis thereafter, a registered foreign board of trade will require that each current and prospective member or other participant that is granted direct access to the foreign board of trade's trading system and that is not registered with the Commission as a futures commission merchant, an introducing broker, a commodity trading advisor or a commodity pool operator, file with the foreign board of trade a written representation, executed by a person with the authority to bind the member or other participant, stating that as long as the member or other participant is authorized to enter orders directly into the trade matching system of the foreign board of trade, the member or other participant agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to the registration.

* * * * *

(iii) The foreign board of trade, clearing organization, and each current and prospective member or other participant that is granted direct access to the foreign board of trade's trading system and that is not registered with the Commission as a futures commission merchant, an introducing broker, a commodity trading advisor, or a commodity pool operator will maintain with the foreign board of trade written representations, executed by persons with the authority to bind the entity making them, stating that as long as the foreign board of trade is registered under this regulation, the foreign board of trade, the clearing organization or member of either or other participant granted direct access pursuant to this regulation will provide, upon the request of the Commission, the United States Department of Justice and, if appropriate, the National Futures Association, prompt access to the entity's, member's, or other participant's original books and records or, at the election of the requesting agency, a copy of specified information containing such books and records, as well as access to the premises where the trading system is available in the United States.

■ 6. In § 48.9, add paragraph (b)(5) to read as follows:

§ 48.9 Revocation of registration.

* * * * *

(b) * * *

(5) The Commission may revoke a foreign board of trade's registration in response to a voluntary request by the foreign board of trade to vacate its registration. A foreign board of trade may file a request to vacate its registration with the Secretary of the Commission at *FBOTapplications@cftc.gov.*

* * * * *

Issued in Washington, DC, on February 23, 2024, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Foreign Boards of Trade—Commission Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

I support the proposed amendments to CFTC rules for foreign boards of trade (FBOTs) that would permit a registered FBOT to provide direct access to its electronic trading and order matching system to a registered introducing broker (IB) located in the United States for submission of customer orders to the FBOT's trading system for execution. Based upon more than ten years of Commission experience with the existing rules for FBOTs, the Commission is also proposing certain enhancements and modernization of the existing ruleset.

The existing FBOT rules were promulgated in 2011. Today's proposed amendments are emblematic of the Commission's ongoing consideration of its existing rules and my commitment to ensuring that our rules continue to address the reality of today's markets and their structure. The proposed changes may enable new types of market participants to access registered FBOTs, which could help improve liquidity and reduce fragmentation, thereby promoting healthier markets.

I look forward to hearing the public's comments on the proposed amendments to the regulations for FBOTs. I thank staff in the Division of Market Oversight, Office of the General Counsel, and the Office of the Chief Economist for all of their work on the proposal.

Appendix 3—Statement of Commissioner Kristin N. Johnson

Introduction

The Commodity Futures Trading Commission's (Commission or CFTC) governing statute, the Commodity Exchange Act (CEA), enumerates several key aims. Protecting customers from the misuse of customer assets is one of the central goals of derivatives market regulations. Protecting customers begins with carefully evaluating, reviewing, monitoring, and enforcing the regulations that govern intermediaries in our markets.

The Commission has established a comprehensive customer protection framework that applies to futures commission merchants (FCM). This framework requires certain entities that hold customer assets to register with the Commission as an FCM. Under our rules, FCMs must comply with strict segregation and risk disclosure requirements and establish know-your-customer (KYC) and anti-money laundering (AML) programs.

Consequently, any Commission rule or regulation that permits entities exempt from registration as an FCM to hold customer assets must be based on a careful evaluation and consideration of the protections afforded to such customers. Our consideration is particularly critical, if not heightened, in the absence of FCM registration.

Additionally, the Commission must ensure that U.S. customers are not afforded less protection when trading outside the United States. Trading in foreign markets exposes U.S. customers—institutional or retail—to a number of important risks because clearing intermediaries may hold U.S. customers' cash and securities outside the United States.

The mechanics of trading in foreign markets involve posting customer cash and securities to a clearing firm or exchange organized pursuant to the laws of, and physically located in, a foreign jurisdiction. A bankruptcy or insolvency proceeding related to the foreign clearing firm will be subject to applicable foreign laws. These laws will govern the application of any customer protections and the repatriation of customer assets to U.S. residents. As a result, U.S. customers may not receive the specific protections they would be afforded as customers of a Commission-registered FCM under the U.S. bankruptcy code and part 190 of the Commission's regulations.

Part 48 of the Commission's regulations sets forth the conditions under which a foreign board of trade (FBOT) may provide persons located in the United States with direct access to the FBOT's trading system to trade foreign futures and options. CFTC Regulation 48.4 establishes the registration eligibility for FBOTs and identifies the entities to which an FBOT may permit direct access once it is registered.

The Commission seeks to amend part 48 to permit an FBOT registered with the Commission to provide direct access to introducing brokers (IBs) located in the United States and registered with the Commission to submit orders to trade foreign futures and options on behalf of customers located in the United States (Proposed Rule).[1] Under the Proposed Rule, the foreign futures and options must be cleared by a registered FCM or a foreign clearing firm that is exempt from FCM registration (exempt clearing firm) and located in a foreign jurisdiction that the Commission has determined to have a comparable regulatory framework to the CFTC's regulatory scheme pursuant to CFTC Regulation 30.10.

While our regulations permit exempt clearing firms, the Commission must maintain a robust process for evaluating exemption requests. These criteria, pursuant to CFTC Regulation 30.10, ensure that only countries with comparable regulatory requirements—including with respect to segregation, risk disclosures, and KYC and AML programs—are granted an exemption from Commission regulations. The need for strong customer protection safeguards is heightened when firms organized and located outside the United States. solicit U.S. customers to engage in derivatives activities outside the United States.

The Proposed Rule must therefore include critical customer protection and market integrity guardrails. The Commission must ensure that U.S. customers allowed to have direct access to FBOTs through CFTC-registered IBs receive customer protections equivalent to the protections available when engaging with U.S.-registered FCMs.

Wherever the Commission permits firms to follow foreign regulatory requirements instead of Commission requirements, the Commission must undertake a thorough process to ensure that those foreign requirements are, among other things, no less protective for customers than Commission requirements.

Over the course of my tenure as a Commissioner, I have consistently supported the Commission's efforts to advance the protection of customer funds. I support the Proposed Rule, which includes important protections for U.S. customers, and look forward to comments confirming or offering guidance on how the Commission may ensure that the Proposed Rule advances equivalent protections for U.S. customers clearing through an exempt clearing firms, including with respect to segregation requirements, risk disclosures, and KYC and AML programs.

Part 48 History

Since as early as 1996, FBOTs relied on staff no-action letters to provide trading direct access to persons located in the United States. Section 738 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends section 4(b) of the CEA, empowering the Commission to ''adopt rules and regulations requiring registration with the Commission for [an FBOT] that provides the members of the [FBOT] or other participants located in the United States with direct access to the electronic trading and order matching system.'' [2] To have direct access, a U.S.-registered IB must be given ''an explicit grant of authority'' by the FBOT ''to enter trades directly into the [FBOT's] trade matching system.'' [3]

In 2011, the Commission adopted part 48 pursuant to this statutory mandate, requiring an FBOT to register with the Commission in order to provide its members or other participants located in the United States with direct access for electronic trading and execution.[4]

Under part 48, registered FBOTs may permit direct access by specified participants located in the United States for the purpose of executing customer orders, but the Commission imposed very important conditions on certain specific trading intermediaries—Commission-registered CPOs and CTAs submitting orders on behalf of a United States pool or customer. Those CPOs and CTAs are also required to submit such orders for clearing to a Commission-registered FCM or a clearing broker exempt from FCM registration under CFTC regulation 30.10 that ''guarantees, without limitation, all such trades.'' [5] As an intermediary between the U.S.-located customer and the foreign exchange, the FCM or foreign clearing broker is liable for all trades executed on the FBOT.

Proposed Rule

The Proposed Rule would be the first change to part 48 since 2011, amending CFTC Regulation 48.4(b) to add IBs located in the United States and registered with the Commission to the list of trading intermediaries to whom FBOTs may grant direct access for the execution of U.S. customer orders. The customer base of IBs is diverse and includes both institutional customers, retail customers, and end-users. IBs engage in soliciting U.S. customers to purchase a wide range of derivatives, including futures contracts, but do not collect margin against those orders (or extend credit in lieu of margin).[6]

Currently, FBOTs may provide direct access to IBs located outside the United States but not to IBs located in the United States. Under the Proposed Rule, FBOTs would be able to provide registered IBs located in the United States with direct access to execute customer trades, provided that, like CTAs and CPOs, they submit such orders for clearing to a Commission-registered FCM or a firm exempt from FCM registration under CFTC Regulation 30.10 that guarantees all trades.

Commission Customer Protections

The condition requiring that IBs submit their foreign futures and options to a Commission-registered FCM or exempt clearing firm is meant to safeguard customer margin; but the Commission must be deeply thoughtful in its assessment of whether a foreign jurisdiction offers comparable customer protection guardrails. Protecting the assets of customers is one of the Commission's core missions.

Adopted in 1987, part 30 of the CFTC's regulations are intended to ''add to the

[1] The Commission is also proposing to establish a procedure for an FBOT to request the revocation of its registration, and to remove certain outdated references to ''existing no-action relief.''

[2] 7 U.S.C. 6(b).

[3] *Id.*

[4] Registration of Foreign Boards of Trade, 76 FR 80674 (Dec. 23, 2011).

[5] 17 CFR 48.4(b)(3).

[6] 7 U.S.C. 1a(31).

Commission's existing customer protection regulatory scheme coverage of foreign futures and options transactions undertaken by U.S. domiciliaries.'' [7]

Pursuant to CFTC Regulation 30.4, an intermediary that accepts the funds of U.S. residents must register as an FCM, provide risk disclosures and comply with the customer protection framework for U.S. customers established in CFTC Regulation 30.7.[8] Notably, a Commission-registered FCM is required to maintain in a separate account sufficient customer funds (referred to as secured amounts) to cover its liabilities to foreign futures and options customers, among other requirements.[9] Separately, the Bank Secrecy Act and related regulations require FCMs and IBs to ''establish [AML] programs, report suspicious activity, verify the identity of customers and apply enhanced due diligence to certain types of accounts involving foreign persons.'' [10]

By contrast, pursuant to CFTC Regulation 30.10, an exempt clearing firm may hold the funds of U.S. customers outside the United States without registering as an FCM, if it is located in a jurisdiction that the Commission has determined has a comparable regulatory framework to the U.S. scheme. The Commission may grant, and has granted, exemptions from part 30 pursuant to the exemptive procedures set forth in CFTC Regulation 30.10, a framework that has been in place at least since the 1980s. Customers of exempt clearing firms should benefit from the customer protection, risk disclosure, KYC, and AML requirements available to customers of Commission-registered FCMs.

In making its comparability determination, the Commission considers certain threshold elements of a comparability framework, including minimum financial requirements for entities that accept customer funds; protection of customer funds from misapplication; and sales practice standards, which includes disclosure of the risks of futures and options transactions, particularly the risk of foreign transactions traded outside the jurisdiction of U.S. law.[11] In evaluating the treatment of customer funds, the Commission will also ''consider protections accorded customer funds in a bankruptcy under applicable law, as well as protection from fraud.'' [12] The Commission may also take into account other factors. This analysis is essential to ensuring the integrity of our markets, the protection of our customers, and the mitigation of systemic risk.

Protecting U.S. Customers in Foreign Jurisdictions

In adopting the Proposed Rule's requirement that foreign futures and options transactions be cleared through either an FCM or a clearing firm exempt from FCM registration, the Commission's goal is to ensure that U.S. customers are not afforded less protection when trading offshore and clearing through an exempt clearing firm. This is accomplished through the application of robust comparability standards when the Commission provides exemptions pursuant to CFTC Regulation 30.10.

The Commission has been guided by ''Congress' intent that foreign futures and options products sold in the U.S. be subject to regulatory safeguards comparable to those applicable to domestic transactions.'' [13] The legal and regulatory framework of the foreign jurisdiction must be found to be comparable to the U.S. framework, but the foreign jurisdiction's segregation, risk disclosure, KYC, and AML requirements merit particular attention.

As I noted in a recent statement regarding a proposed comparability determination for the UK's capital adequacy and financial reporting requirements, ''mutual understanding and respect for partner regulators in other countries advances the Commission's goal of setting a global standard for sound derivatives regulation, enhances market stability, and is also deeply rigorous, reflecting the Commission's commitment to safe swaps markets.'' [14]

The Commission included several important questions as requests for comments to assist in evaluating whether certain elements of the foreign jurisdiction's laws adequately protect our markets and customers. I want to highlight a few questions below.

(1) Are there other issues the Commission should address in order to ensure that FBOTs providing direct access to IBs under proposed § 48.4(b)(4) does not harm U.S. markets or increase risk to the U.S. economy?

(2) Are there relevant considerations relating to the clearing and guarantee of IB trades that differ from that of CPO and CTA trades?

(3) Should the Commission instead require all U.S. customer trades entered by an IB via direct access on a registered FBOT to be guaranteed by a registered FCM (but not extend the condition to firms exempt from FCM registration under § 30.10 to carry such trades)? Would permitting firms exempt from FCM registration under § 30.10 to carry U.S. customer trades entered by an IB via direct access on a registered FBOT raise any issues with anti-money laundering (AML) requirements under the Bank Secrecy Act and Commission regulations?

I invite comments regarding comparable protections for U.S. customers clearing through an exempt clearing firms pursuant to CFTC Regulation 30.10, including with respect to segregation requirements, risk disclosures, and KYC and AML programs. These comments may inform the development of the Proposed Rule.

The Commission is required to engage in a rigorous comparability assessment of the foreign jurisdiction's legal and regulatory scheme. Among other concerns, the analysis must ensure that permitting U.S. customers to access foreign markets through IBs does not engender systemic risks that may undermine the integrity of U.S. or global derivatives markets or otherwise amplify risks to the U.S. or global economy. Exempt clearing firms must protect the positions and collateral of U.S. customers under the relevant laws of their jurisdiction in a manner parallel to the protections afforded customer positions and collateral under U.S. regulations governing the protection of assets of U.S. customers using on a Commission-registered FCM as a clearing intermediary.

Risk disclosure requirements reduce information asymmetries, improve transparency, and enable U.S. customers to make informed decisions about the appropriateness of entering into a foreign futures and options transaction. Commission-registered FCMs that clear foreign futures and options transactions for U.S. IB customers are required to provide disclosures to alert U.S. customers to the risks of trading in foreign markets and the application of foreign laws. It is imperative that U.S. customers that clear through an exempt clearing firm are similarly apprised.

The Preamble to the Proposed Rule notes that an exempt clearing firm should be subject to a comparable regulatory program that includes, among other elements, minimum sales practice standards, including ''disclosure of the risks of futures and options transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law.'' [15] The Commission must be certain.

Protecting our markets from fraud, illicit trading, and money laundering or terrorism financing promotes market integrity within our financial system. Commission-registered FCMs that clear foreign futures and options transactions for U.S. IB customers are subject to KYC and AML requirements under the Bank Secrecy Act and Commission regulations. The Commission must be confident that allowing foreign clearing firms exempt from FCM registration under CFTC Regulation 30.10 are allowed to carry U.S. customer trades entered by an IB via direct access on a registered FBOT would not raise any issues with KYC and AML requirements. Careful consideration must be given to the existence of similar requirements in the country in which the exempt clearing firm is located.

I look forward to the comments to the Proposed Rule. I am particularly interested in commenters' perspective on whether the Proposed Rule will engender risks or consequences that the Proposed Rule fails to

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[7] Foreign Futures and Foreign Options Transactions, 52 FR 28980, 28980 (Aug. 5, 1987).

[8] At the request of my office, division staff included a reminder in the Preamble to the Proposed Rule that these foreign futures and options transactions would also be subject to required risk disclosures pursuant to CFTC Regulation 30.6, which requires IBs and FCMs to provide a statement to customers disclosing the risks of trading foreign futures and options offshore.

[9] 17 CFR 30.7.

[10] CFTC, Anti-Money Laundering, *https://www.cftc.gov/IndustryOversight/AntiMoneyLaundering/index.htm#:~:text=The%20BSA%20and%20related%20regulations,of%20accounts%20involving%20foreign%20persons.*

[11] *See* Appendix A to part 30, title 17, *https://www.ecfr.gov/current/title-17/chapter-I/part-30/appendix-Appendix%20A%20to%20Part%2030.*

[12] *Id.*

[13] *Id.*

[14] Kristin N. Johnson, Commissioner, CFTC, Combatting Systemic Risk and Fostering Integrity of the Global Financial System Through Rigorous Standards and International Comity (Jan. 24, 2024), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement012424#_ftnref5.*

[15] *See* Appendix A to part 30, title 17, *https://www.ecfr.gov/current/title-17/chapter-I/part-30/appendix-Appendix%20A%20to%20Part%2030.*

examine or consider. Among other risks, it is imperative that the Commission understand the diverse risks to U.S. retail customers.

Conclusion

I support the issuance of the Proposed Rule, which seeks to advance the CEA's goals of protecting U.S. markets, market participants, and both institutional and retail customers.

I commend the careful work of the staff of the Division of Market Oversight, including Alexandros Stamoulis, Roger Smith, Maura Dundon, and David Reiffen, on the Proposed Rule.

Appendix 4—Statement of Commissioner Christy Goldsmith Romero

The CFTC is proposing to change a post-Dodd Frank Act reform to issue a rule that permits CFTC-registered foreign boards of trade to have direct access to U.S. customers through introducing brokers.[1] The Dodd-Frank Act defines direct access to mean an explicit grant of authority by a foreign board of trade to identified members or other participants located in the United States to enter trades directly into the trade matching engine of the foreign board of trade. As described in the open Commission meeting on the final rule, ''By adopting uniform application procedures and registration requirements and conditions, the process by which foreign boards of trade are permitted to provide direct access to their trading systems will become more standardized, more transparent to both registration applicants and the general public, and will promote fair and consistent treatment of all applicants.'' [2]

The Commission in 2011 limited direct access to certain intermediaries that did not include IBs, explaining,

Part 48 identifies the types of entities to which a registered FBOT could grant direct access. That would include identified members and other participants that trade for their proprietary accounts, FCMs that can submit orders on behalf of U.S. customers, and CPOs or CTAs or entities exempt from such registration that submit orders on behalf of U.S. pools or for accounts of U.S. customers for which they have discretionary authority. Again, this list of eligible participants is consistent with the participants under the existing no-action relief.[3]

FBOT's have operated under this rule ever since. For the first time, this proposal would change that rule and expand direct access to an additional 937 intermediaries who are registered introducing brokers. It is not addressed in the rule or preamble why this rule change is necessary. I am aware of an early 2020 request from one of the 24 registered foreign boards of trade for no-action relief related to direct access for IBs. The CFTC did not act on that request over the last four years. I am not aware that the request has been made by any other FBOT. The CFTC is going farther than what was requested by one FBOT, and is instead changing the rule for all foreign boards of trade.

As regulators, we have an important responsibility to make an independent assessment of what is needed to carry out the CFTC's mission to promote market resilience, integrity, and vibrancy through sound regulation. If the Commission is going to engage in rulemaking to change post-Dodd Frank Act reforms, it is important that the CFTC analyze the current market need for the change, and the consequences of changing the rule, including any potential increase in benefits as well as risks (and conditions necessary to manage those risks).

It can be difficult to make decisions on proposed rules based on a general statement that the Commission is proposing the rule ''based on the Commission's experience engaging with registered FBOTs and applying part 48 over the ensuing years.'' I would have liked to have seen a discussion of that experience, the current state of the market, and the need for expanded access for more than one FBOT. FBOTs are all over the world, reflecting unique nations, continents, markets, and issues. I look forward to public comment on whether there are important differences in FBOTs that should be reflected in any potential final rule. I appreciate a November 2023 letter by the Futures Industry Association, which explains:

With IBs currently not allowed FBOT direct access under 48.4(b), U.S. participants are left without this access route after EU-based IBs close, usually around 1 p.m. Eastern time. Updating the rules to expand direct access to U.S.-registered IBs would allow U.S. market participants continued access to the relevant foreign markets after the closure of those broker firms in Europe that provide access earlier in the day. This is especially important for U.S. participants' ability to conduct their risk management during periods of high market volatility, such as those experienced with the collapse of Silicon Valley Bank and Russian invasion of Ukraine.

Given the public interests behind the 2011 rule of standardization, transparency, and a need for fair and consistent treatment, as well as FIA's description of a current risk management need, I am willing to support releasing the proposed rule to gain public comment. However, I caution not to read into this supportive vote that I will vote in favor of any future action on this or other rulemaking or action without sufficient independent CFTC analysis to accompany an industry request.

Finally, given the Commission's mission to promote market integrity, I question the proposed allowance of a guarantee by an entity exempt from FCM registration under Regulation 30.10 that is not required to follow the anti-money laundering and other requirements of the Bank Secrecy Act, rather than limit the guarantee to registered FCMs. While an entity exempt from FCM registration under Regulation 30.10 may be subject to another country's anti-money laundering regime, the CFTC does not have the same level of insight or enforceability with that entity as with a registered FCM that is subject to the BSA.

As the former head of a Federal law enforcement office (the Special Inspector General for the Troubled Asset Relief Program), I have significant experience in using Currency Transaction Reports and Suspicious Activity Reports required by the BSA to investigate and prosecute money laundering, organized crime, drug trafficking and other criminal enterprises. I have experienced the benefit of financial institutions serving as a first line of defense given their BSA requirements.

The Commission's mission includes requiring safeguards to combat money laundering, illicit finance, and terrorist financing that can threaten national security and financial stability, and undermine confidence in the U.S. financial system. Illicit finance threats, vulnerabilities, and risks facing the United States continue to grow.[4] The Bank Secrecy Act plays a critical role in addressing these threats and risks.

I appreciate the staff for their work on this proposed rule change and look forward to public comment.

Appendix 5—Statement of Support of Commissioner Caroline D. Pham

I support the Notice of Proposed Rulemaking on Foreign Boards of Trade (FBOT) (Proposed FBOT Amendments or Proposal) because it promotes access to markets for U.S. participants, competition, and liquidity. I would like to thank Maura Dundon, Roger Smith, and Alexandros Stamoulis in the CFTC's Division of Market Oversight for their work on the Proposal. I especially appreciate their efforts to work with me and include my revisions.

As a CFTC Commissioner, I have made it clear that I believe in good policy that enables growth, progress, and access to markets.[1] Accordingly, I am pleased to support Commission efforts that take a pragmatic approach to issues that hinder market access and cross-border activity.[2] Today's Proposal exemplifies policy that ensures a level playing field, and I applaud this step in the right direction for market structure.

FBOTs have been a critical piece of the CFTC's markets for decades and provide

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[1] The Dodd Frank Act provided that the CFTC may adopt rules and regulations requiring registration for FBOTs that seek direct access to U.S. customers. Post-Dodd Frank Act regulations in part 48 providing that registration framework has conditions limiting the scope of intermediaries eligible for direct access for submission of customer orders, not allowing for introducing brokers.

[2] *See* CFTC, *Transcript of December 5, 2011 Commission Meeting, https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/dfsubmission/dfsubmission12_120511-trans.pdf.*

[3] *See Id.*

[4] *See* Treasury's *The 2024 National Money Laundering Risk Assessment, The 2024 National Terrorist Financing Risk Assessment, and The 2024 National Proliferation Financing Risk Assessment, https://home.treasury.gov/news/press-releases/jy2080.*

[1] *See, e.g.,* Keynote Address by Commissioner Caroline D. Pham, 98th Annual Convention of the American Cotton Shippers Association (June 22, 2022), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opapham2;* Statement of Commissioner Caroline D. Pham on Staff Letter Regarding ADM Investor Services, Inc. (June 16, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement061623.*

[2] *Id.*

access for U.S. market participants to non-U.S. markets in realization of the global economy and international business.[3] The main substantive amendment in today's Proposed FBOT Amendments is to Regulation 48.4, which currently permits futures commission merchants (FCMs), commodity pool operators (CPOs), and commodity trading advisors (CTAs) to enter orders on behalf of customers or commodity pools via direct access on a registered FBOT.[4]

As explained in the Proposal, the Commission is proposing to permit introducing brokers (IBs)[5] to submit customer orders via direct access to FBOTs by adding IBs to the list of permissible intermediaries in Regulation 48.4. Doing so would permit IBs to act as executing brokers for U.S. customers that in turn use another intermediary, like an FCM,[6] for clearing and carrying the customer accounts, similar to the way IBs currently perform this service on CFTC-registered designated contract markets (DCMs). Among other benefits, U.S. market participants interested in trading foreign futures could have more choices in brokers and broker arrangements. The Proposed FBOT Amendments will also ensure that customer protections are in place, similar to the current FBOT requirements for FCMs, CPOs, and CTAs.

As sponsor of the CFTC's Global Markets Advisory Committee (GMAC),[7] I have devoted a significant part of my Commissionership to supporting solutions that will enhance the resiliency and efficiency of global markets.[8] The Proposal is policy that mitigates market fragmentation and the associated impact on liquidity, and promotes the overall competitiveness of our derivatives markets. I am pleased to support the Proposed FBOT Amendments, and I look forward to the public comments.

[FR Doc. 2024–04117 Filed 2–29–24; 8:45 am]

BILLING CODE 6351–01–P

[3] While FBOTs initially had operated pursuant to no-action relief, in 2011, following the Dodd-Frank Wall Street and Consumer Protection Act of 2010, the Commission began registering FBOTs. *See* Registration of Foreign Boards of Trade, Final Rule, 76 FR 80674 (Dec. 23, 2011), *https://www.federalregister.gov/documents/2011/12/23/2011-31637/registration-of-foreign-boards-of-trade.*

[4] *See* 17 CFR 48.4.

[5] The Commission generally defines an IB as an individual or organization that solicits or accepts orders to buy or sell futures contracts, commodity options, retail off-exchange forex or commodity contracts, or swaps, but does not accept money or other assets from customers to support these orders. *See* CEA section 1a(31); 17 CFR 1.3(mm). The Commission registers IBs under CEA section 4d(g) and Regulation 3.4(a). *See* 7 U.S.C. 6d(g) and 17 CFR 3.4(a).

[6] U.S. customers could also use a firm exempted by the Commission pursuant to Regulation 30.10. The CFTC's part 30 regulations govern the offer and sale of foreign futures and options contracts to U.S. customers. Regulation 30.4 requires that in order to accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure transactions conducted by U.S. persons on an FBOT, a person must be registered as an FCM. See 17 CFR 30.4(a). The Commission may grant and has granted exemptions to this requirement to register as an FCM based on petitions filed pursuant to 17 CFR 30.10. A Regulation 30.10 exemptive order permits firms subject to regulation by a foreign regulator to conduct business from locations outside of the U.S. for U.S. persons on FBOTs without registering as FCMs, based upon the firm's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the CEA.

[7] Commissioner Pham Announces New Members and Leadership of the CFTC's Global Markets Advisory Committee and Subcommittees (June 30, 2023), *https://www.cftc.gov/PressRoom/PressReleases/8740-23.*

[8] Opening Statement of Commissioner Caroline D. Pham before the Global Markets Advisory Committee (Feb. 13, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement021323.* Most recently, the GMAC made eight recommendations to the CFTC that promote access to markets and competition while safeguarding financial stability. CFTC Global Markets Advisory Committee Advances Key Recommendations (Feb. 8, 2024), *https://www.cftc.gov/PressRoom/PressReleases/8860-24.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 50

[Docket No. FDA–2022–D–2997]

Key Information and Facilitating Understanding in Informed Consent; Draft Guidance for Sponsors, Investigators, and Institutional Review Boards; Availability

AGENCY: The Office for Human Research Protections, Office of the Assistant Secretary for Health, Office of the Secretary, and the Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Office for Human Research Protections, Office of the Assistant Secretary for Health (OHRP), and the Food and Drug Administration (FDA) are announcing the availability of a draft guidance entitled ''Key Information and Facilitating Understanding in Informed Consent.'' This draft guidance provides recommendations related to two provisions of the revised Federal Policy for the Protection of Human Subjects (the revised Common Rule) by the U.S. Department of Health and Human Services (HHS) and identical provisions in FDA's proposed rule ''Protection of Human Subjects and Institutional Review Boards.'' FDA's proposed rule, if finalized, would harmonize certain sections of FDA's regulations on human subject protections and institutional review boards (IRBs), to the extent practicable and consistent with other statutory provisions, with the revised Common Rule, in accordance with the 21st Century Cures Act (Cures Act). The guidance addresses the provisions of the revised Common Rule that require informed consent to begin with key information about the research and to present information in a way that facilitates understanding and identical provisions in FDA's proposed rule.

DATES: Submit either electronic or written comments on the draft guidance by April 30, 2024 to ensure that FDA and OHRP consider your comment on this draft guidance before the agencies begin work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–2997 for ''Key Information and Facilitating Understanding in Informed

Consent.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002, 800–835–4709 or 240–402–8010; the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002, *CDRH-Guidance@fda.hhs.gov;* the Office of Clinical Policy, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993, 301–796–8340, or the Division of Policy and Assurances, Office for Human Research Protections, 1101 Wootton Pkwy., Suite 200, Rockville, MD 20852, 240–453–6900 or 866–447–4777; *ohrp@hhs.gov.* Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Alyson Karesh, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6356, Silver Spring, MD 20993–0002, 301–796–3826; James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; Soma Kalb, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3516, Silver Spring, MD 20993, 301–796–5490; the Office of Clinical Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993, 301–796–8340; or the Division of Policy and Assurances, Office for Human Research Protections, 1101 Wootton Pkwy., Suite 200, Rockville, MD 20852, 240–453–6900 or 866–447–4777.

SUPPLEMENTARY INFORMATION:

I. Background

FDA and OHRP are announcing the availability of a draft guidance entitled ''Key Information and Facilitating Understanding in Informed Consent.'' This draft guidance provides recommendations related to two provisions of the revised Common Rule and identical provisions in FDA's proposed rule ''Protection of Human Subjects and Institutional Review Boards'' (87 FR 58733, September 28, 2022). The FDA's proposed rule, if finalized, would harmonize certain sections of FDA's regulations on human subject protection and IRBs, to the extent practicable and consistent with other statutory provisions, with the revised Common Rule (codified by the Department of Health and Human Services at 45 CFR part 46, subpart A), in accordance with the Cures Act (Pub. L. 114–255, section 3023). The guidance addresses the provisions of the revised Common Rule that require informed consent to begin with key information about the research and to present information in a way that facilitates understanding and identical provisions in FDA's proposed rule.

In this draft guidance, FDA and OHRP provide recommendations for developing a key information section for clinical trials or studies, including strategies to make consent information as a whole more understandable for prospective research participants. We also provide a sample approach to the key information section that is based, in part, on research regarding patient understanding of information found in labeling for prescription drugs. By using simple phrases and plain language principles, as well as formatting and organizational tools, researchers found that presenting information in a discrete bubble format with topics organized or grouped together can facilitate consumer understanding.[1] In the appendix of the draft guidance, we provide an example of a key information section using the bubble format. We encourage interested parties, with input from IRBs, to develop innovative ways to provide key information that will help prospective subjects better understand the reasons why one might or might not want to participate in research.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent our current thinking on ''Key Information and Facilitating Understanding in Informed Consent.'' It does not establish any rights for any person and is not binding on FDA, OHRP, or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.[2]

[1] Boudewyns, V., A.C. O'Donoghue, B. Kelly, et al. (2015), ''Influence of Patient Medication Information Format on Comprehension and Application of Medication Information: A Randomized, Controlled Experiment,'' *Patient Education and Counseling,* vol. 98(12), pp. 1592–1599, *https://doi.org/10.1016/j.pec.2015.07.003.*

[2] The Office of the Federal Register has published this document under the category ''Rules and Regulations'' pursuant to its interpretation of 1 CFR 5.9(b). We note that the categorization as such for purposes of publication in the **Federal Register** does not affect the content or intent of the document. See 1 CFR 5.1(c).

II. Paperwork Reduction Act of 1995

This draft guidance refers to proposed collections of information described in FDA's September 28, 2022, proposed rule on ''Protection of Human Subjects and Institutional Review Boards'' (87 FR 58733), which this draft guidance is intended to interpret, and with previously approved collections of information described in the revised Federal Policy for the Protection of Human Subjects (the revised Common Rule). The proposed collections of information in the proposed rule are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). As required by the PRA, FDA has published an analysis of the information collection provisions of the proposed rule (87 FR 58733 at 58744) and they have been approved under OMB control number 0910–0130. The collections of information in 45 CFR 46 and the final rule entitled, ''Federal Policy for the Protection of Human Subjects'' (Common Rule) have been approved under OMB control number 0990–0260.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm, https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm, https://www.fda.gov/about-fda/office-clinical-policy-and-programs/office-clinical-policy, https://www.fda.gov/regulatory-information/search-fda-guidance-documents, http://www.hhs.gov/ohrp/newsroom/rfc/index.html,* or *https://www.regulations.gov.*

Dated: February 26, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04377 Filed 2–29–24; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0626; FRL–11614–03–R9]

Air Plan Disapproval; California; Los Angeles-South Coast Air Basin; 1997 8-Hour Ozone; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for a proposed rule published February 2, 2024. The current comment period for the proposed rule was set to end on March 4, 2024. In response to requests from several commenters, the EPA is extending the comment period for the proposed action to April 3, 2024.

DATES: The comment period for the proposed rule published on February 2, 2024, at 89 FR 7320 is extended. Comments must be received on or before April 3, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0626 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3964 or by email at *vagenas.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION: On February 2, 2024, the EPA published a proposal to disapprove a state implementation plan revision submitted by the State of California to meet Clean Air Act (CAA) requirements for the 1997 8-hour ozone national ambient air quality standards (NAAQS) in the Los Angeles-South Coast Air Basin, California ozone nonattainment area. This submission, titled ''Final Contingency Measure Plan—Planning for Attainment of the 1997 80 ppb 8-hour Ozone Standard in the South Coast Air Basin,'' addresses the CAA requirements for the submission of contingency measures that will be implemented if emissions reductions from anticipated technologies associated with the area's 1997 ozone NAAQS attainment demonstration are not achieved. For more detailed information about this matter, please refer to the February 2, 2024 **Federal Register** document.

The notice of proposed rulemaking initially provided for comments to be submitted to the EPA on or before March 4, 2024 (a 30-day public comment period). The EPA received several comments requesting an extension of the comment period. To ensure the public has sufficient time to evaluate the proposal and develop comments, the EPA is extending the comment period until April 3, 2024.

Dated: February 23, 2024.

Matthew Lakin,

Acting Director, Air and Radiation Division, Region IX.

[FR Doc. 2024–04287 Filed 2–29–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2023–0617; FRL–11781–01–R3]

Air Plan Approval; Delaware; Amendments to Delaware's Requirements for Public Notice of Certain Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a

state implementation plan (SIP) revision submitted by the State of Delaware into Delaware's existing SIP-approved public notice requirements for certain permits authorized under Delaware regulation 1102. The revisions Delaware made to its underlying regulation standardize the public notices requirements across various permits under Delaware regulation 1102 to be consistent with EPA's October 18, 2016 final rule amendments to the notice and comment requirements for Title V, new source review and outer continental shelf (OCS) permit programs. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 1, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2023–0617 at *www.regulations.gov,* or via email to *Opila.Marycate@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Yongtian He, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2339. Mr. He can also be reached via electronic mail at *He.Yongtian@epa.gov.*

SUPPLEMENTARY INFORMATION: On November 10, 2022, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted to EPA a revision to the Delaware SIP. DNREC revised 7 DE Admin Code 1102 (DE 1102) to standardize the public notice requirements for certain permits authorized under DE 1102 to be consistent with EPA's final rule entitled, ''Revisions to Public Notice Provisions in Clean Air Act Permitting Programs,'' (81 FR 71613; October 18, 2016) and the implementing regulations codified in 40 CFR 70.7(h)(2).

I. Background

The CAA requires stationary sources of air pollution to obtain permits to construct and operate. EPA's permitting regulations are contained in 40 CFR parts 51, 52, 70, and 71, and cover the requirements for Federal permit actions (*i.e.,* when either EPA or a state or local air agency that has been delegated EPA's authority issues a Federal air permit). These regulations also establish the minimum requirements for EPA approval of state or tribal implementation plans (SIPs) and permitting programs for the issuance of state permits. EPA's regulations contain, among other things, requirements for public notice and availability of supporting information to allow for informed public participation in permit actions (public notice requirements).

On October 18, 2016, EPA issued a final rule (October 18, 2016 rule) that, among other things, revised the public notice requirements for the New Source Review (NSR) construction permits, OCS, and title V operating permits issued by either EPA or by state, local or tribal air agencies exercising Federal authority delegated by the EPA.[1] EPA's October 18, 2016 rule also amended the regulatory requirements for obtaining EPA-approval of state, local, or tribal air permitting programs, but October 18, 2016 rule did not require states to revise their public notice requirements. However, any state that did so would need to revise their requirements consistent with the regulations revised by EPA's October 18, 2016 rule in order to receive EPA approval of those changes.

Delaware amended 7 DE Admin. Code 1102 (DE 1102) to voluntarily update the public notice requirements for permits covered by the regulation to be consistent with certain provisions of the October 18, 2016 rule regulatory revisions. Specifically, Delaware has amended the public notice requirements in DE 1102 to require that each public notice include: (1) The name, address, and telephone number of a person (or an email or website address) of DNREC Staff from whom interested persons may obtain additional information; and (2) The time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).] [2]

II. Summary of SIP Revision and EPA Analysis

Delaware's November 10, 2022 SIP submission reflects amendments made to its public notice requirements in DE 1102 that are identical to those in the October 18, 2016 rule's public notice requirements. While DE 1102 applies to some permits that are not covered by EPA's October 18, 2016 rule (such as minor sources), some of the permits covered by DE 1102 are also permits addressed by the October 18, 2016 rule, such as major source operating permits (which are covered under DE 1130). The October 18, 2016 rule established requirements for obtaining EPA-approval of state, local, or tribal air permitting programs changes.

Delaware's submittal consists of changes to subsections 12.3.2 and 12.4.2 of DE 1102. As previously mentioned, these subsections have been amended to require that each public notice include: (1) The name, address, and telephone number of a person (or an email or website address) of DNREC Staff from whom interested persons may obtain additional information; and (2) The time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled). The updated regulatory language in DE 1102 (and DE 1130) mirrors that of EPA's October 18, 2016 rule and Federal regulations regarding public notice requirements for major source permits (81 FR 71613 and 40 CFR 70.7(h)(2)).

This amendment to DE 1102 is not a required SIP revision, however, having chosen to do so, the changes to DE 1102, to the extent they pertain to permits covered by the October 18, 2016 rule, must meet the requirements of that rulemaking and the affected EPA regulations. EPA has determined that the revisions to DE 1102 meet this requirement, and that this SIP revision

[1] See 81 FR 71613.

[2] Delaware had previously revised the public notice operating requirements of its title V operating permit regulations, 7 DE Admin. Code 1130 (DE 1130). DE 1102 also applies to title V sources covered by 1130 as well as other sources, such as minor sources not covered by DE 1130. The effect of these changes is to make all sources covered by DE 1102 and 1130 subject to identical public notice requirements. The changes to DE 1130 have not been submitted to EPA for approval and are not part of this rulemaking.

is approvable because it is consistent with EPA requirements for major sources as described in EPA' October 18, 2016 rule.[3]Additionally, because this SIP revision addresses procedural requirements and not emissions or emissions increases, the submittal is approvable because it will not cause or contribute to a violation of any National Ambient Air Quality Standard (NAAQS), nor will it interfere with any applicable requirement concerning attainment or any other applicable CAA requirement, in accordance with CAA section 110(l).

III. Proposed Action

EPA is proposing to approve the Delaware SIP revision to subsections 12.3.2 and 12.4.2 of 7 DE Admin Code 1102, Permits, which was submitted on November 10, 2022. EPA is soliciting public comments on the proposed rulemaking for the next 30 days. Relevant comments will be considered before taking the final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the amendments to subsections 12.3.2 and 12.4.2 of DE 1102, as discussed in section I and II of this document. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. 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. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

DNREC did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an E.J. analysis and did not consider E.J. in this proposed rulemaking. Due to the nature of the proposed action being taken here, where EPA is approving revisions of the state regulations to be consistent with notice and comment provisions previously established by EPA, this proposed rulemaking is expected to have a neutral to positive impact on the air quality of the affected area.

In addition, this proposed rule, regarding Delaware's amendments to 7 DE Admin. Code 1102, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2024–04366 Filed 2–29–24; 8:45 am]

BILLING CODE 6560–50–P

[3] See 81 FR 71613.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2023–0458; FRL–11759–01–R4]

Air Plan Approval; Tennessee; Revisions to the Continuous Opacity Monitoring System Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee through the Department of Environment and Conservation (TDEC), Division of Air Pollution Control, via a letter dated September 28, 2022. The SIP revision seeks to modify the State's required monitoring standards by adding exemptions to opacity monitoring requirements. EPA is proposing this action pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before April 1, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2023–0458 at *regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Faith Goddard, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303–8960. The telephone number is (404) 562–8757. Ms. Goddard can also be reached via electronic mail at *Goddard.Faith@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

EPA is proposing to approve a SIP revision submitted by Tennessee via a letter dated September 28, 2022,[1] seeking to revise chapter 1200–3–10, *Required Sampling, Recording, and Reporting,* of the Tennessee SIP. These changes seek to modify the State's required monitoring standards. Specifically, the submission includes changes to add exemptions to opacity monitoring requirements at paragraph (1)(b)1. of Tennessee Rule 1200–3–10–.02, *Monitoring of Source Emissions, Recording, and Reporting of the Same are Required.* EPA is proposing to approve Tennessee's September 28, 2022, SIP revision because the State has demonstrated that the changes to the Rule will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171) or any other applicable requirement of the Act.[2]

[1] EPA received the September 28, 2022, submittal on October 3, 2022. For clarity, throughout this notice EPA will refer to the October 3, 2022, submission by its cover letter date of September 28, 2022.

[2] *See* CAA section 110(l).

II. Background

In accordance with 40 CFR 51.214, each SIP must contain legally enforceable procedures to provide information as specified in appendix P of 40 CFR part 51. Appendix P, *Minimum Emission Monitoring Requirements* requires, with certain exceptions, each fossil fuel-fired steam generator of greater than 250 million British thermal units per hour (MMBtu/hr) heat input and an annual average capacity factor of greater than 30 percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the State by the owner or operator, to install, calibrate, maintain, and operate a continuous monitoring system for the measurement of opacity (COMS). Section 3.9 of appendix P, however, allows States to utilize different, but equivalent, procedures and requirements for continuous monitoring systems, provided the SIP includes a description of such alternative procedures for approval by EPA.

Tennessee Rule 1200–3–10–.02(1)(b) establishes requirements for testing, monitoring, and record keeping for certain categories of air pollution sources. Subparagraph (i) of paragraph (1)(b)1. applies to existing fossil fuel-fired steam generators with an annual average capacity factor of greater than 30 percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the Technical Secretary by the owner or operator.[3] The existing rule requires owners or operators of these fossil fuel-fired steam generators with a heat input of 250 MMBtu/hr or greater to install, calibrate, maintain, and operate a COMS, except when only gaseous fuel is burned. Additionally, sources may be exempted from this requirement when oil or a mixture of gas and oil are the only fuels burned and the source can comply with applicable particulate matter (PM) and opacity regulations without the use of PM control equipment and has not been found to be in violation of any applicable visible emission standard requirement. These provisions are consistent with section 2.1.1 of 40 CFR part 51, appendix P.

Tennessee's September 28, 2022, SIP revision revises requirements of Rule 1200–3–10–.02(1)(b)1. to provide a third alternative for fossil fuel-fired steam generators to be exempted from the COMS requirement. The SIP revision is based on an approach to opacity monitoring in EPA's New Source Performance Standards (NSPS) for steam generating units, at 40 CFR part 60, subparts D and Da, and National Emission Standards for Hazardous Air Pollutants (NESHAP) for steam generating units, at 40 CFR part 63, subpart UUUUU. In amendments to the NSPS for steam generating units, EPA eliminated the opacity standard for certain facilities voluntarily using PM continuous emission monitoring systems (CEMS), provided that those facilities comply with a federally enforceable PM limit of 0.030 lb/MMBtu or less.[4] In addition, subparts D and Da of 40 CFR part 60 eliminate the COMS requirement for affected facilities using continuous parametric monitoring systems (CPMS) for PM according to the requirements specified in subpart UUUUU of 40 CFR part 63, which establishes requirements for using PM CEMS and PM CPMS to demonstrate compliance with applicable PM emission limits.[5]

[3] The monitoring requirements of Rule 1200–3–10–.02(1)(b) do not apply to new sources that are subject to new source performance standards under chapter 1200–3–16. *See* 1200–3–10–.02(1)(b)2.

III. Analysis of Tennessee's September 28, 2022, SIP Revision

The changes to Rule 1200–3–10–.02(1)(b) include the removal of a reference to Tennessee Rule 1200–3–16–.02 for the definition of fossil fuel-fired steam generators, because this Rule is not in the SIP and does not include a definition for fossil fuel-fired steam generators.[6] Tennessee has added a statement at the end of subparagraph (i) of part (1)(b)1. to define a ''fossil fuel-fired steam generator'' as ''a furnace or boiler used in the process of burning fossil fuel for the purpose of producing steam by heat transfer.'' EPA notes that this definition of fossil fuel-fired steam generator matches verbatim the NSPS definition of *Fossil-fuel-fired steam generating unit* at 40 CFR part 60, subpart D.[7] Therefore, EPA is proposing to find that this definition for *fossil-fuel-fired steam generating unit* is appropriate.

As noted above, Regulation 1200–3–10–.02(1)(b)1., as revised, includes a third alternative for the subject fossil fuel-fired steam generators to be exempted from the COMS requirement. New subparagraph III of paragraph (1)(b)1.(i)(I) provides that sources are exempt from the COMS requirement if the owner or operator installs, certifies,

[4] *See* 74 FR 5072, 5073–5074 (January 28, 2009), and 40 CFR 60.42(c) and 60.42Da(a) and (b)(1).

[5] *See* 40 CFR 60.45(b)(8); 40 CFR 60.49Da(a)(4)(ii).

[6] The SIP revision states that Regulation 1200–3–16 is in the process of being repealed at the state level. The repeal was announced in a notice to the public by TDEC on May 2, 2023.

[7] *See* 40 CFR 60.41 ''Fossil-fuel-fired steam generating unit.''

operates, and maintains a PM CEMS or CPMS for PM according to the requirements of 40 CFR part 63, subpart UUUUU, and such PM CEMS or CPMS is subject to and complies with the relevant filterable PM standards,[8] monitoring requirements,[9] and work practice standards [10] of subpart UUUUU. Lastly, subparagraph IV is added to paragraph (1)(b)1.(i)(I) to adopt and incorporate the relevant standards of subpart UUUUU by reference. These revisions are consistent with EPA's conclusions, as discussed in Section II of this preamble, that steam generating units complying with a federally enforceable PM limit of 0.030 lb/MMBtu or less [11] will operate with little or no visible emissions and that the use of a CEMS or CPMS for PM, at this level of the PM emissions, is sufficient to demonstrate compliance with applicable SIP opacity standards.[12] EPA also notes that any applicable opacity standards in the SIP remain applicable and may be enforced with visible emissions methods under SIP-approved Rule 1200–3–5–.03.[13]

According to Tennessee's September 28, 2022, SIP submittal, several existing facilities in Tennessee are required to comply with Rule 1200–3–10–.02(1)(b)1., but only three coal-fired fossil fuel plants, operated by the Tennessee Valley Authority (TVA), are subject to 40 CFR part 63, subpart UUUUU and therefore impacted by this Rule revision. Specifically, the changes to the regulation impact boiler numbers 1 through 9 at the Kingston facility, boiler numbers 1 through 4 at the Gallatin facility, and boiler numbers 1 and 2 at the Cumberland facility.[14] These facilities would be able to opt for the new alternative exemption from the COMS requirement based on compliance with continuous PM monitoring requirements.

Section 110(l) of the CAA requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171) or any other applicable requirement of the Act. As discussed above, using the new alternative approach, COMS to measure opacity would not be necessary for the subject fossil fuel-fired boilers since compliance with the PM mass emission limit and the continuous monitoring of compliance with that limit will render opacity negligible. Therefore, EPA is proposing to find that the proposed change to allow certain sources to use alternative monitoring procedures satisfies CAA section 110(l).

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Sections I through III of this preamble, EPA is proposing to incorporate by reference TDEC Regulation 1200–3–10–.02, ''*Monitoring of Source Emissions, Recording, and Reporting of the Same are Required,*'' [15] State effective August 31, 2022, which revises exemptions to monitoring requirements. EPA has made, and will continue to make, these materials generally available through *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).

V. Proposed Action

For the reasons explained above, EPA is proposing to approve Tennessee's September 28, 2022, SIP revision seeking to amend air quality rules in the Tennessee SIP. Specifically, EPA is proposing to approve a revision to 1200–3–10–.02, ''*Monitoring of Source Emissions, Recording, and Reporting of the Same are Required,*'' in the Tennessee SIP to allow for alternative monitoring procedures for certain sources because the revision is consistent with the CAA.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations

[8] *See* 40 CFR 63.9991(a)(1) and table 1 or table 2 of subpart UUUUU.

[9] *See* 40 CFR 63.10010(h) or (i).

[10] *See* 40 CFR 63.10007(a)(1) and table 3 of subpart UUUUU.

[11] Under subpart UUUUU, only existing integrated gasification combined cycle (IGCC) units are subject to a higher PM limit than 0.030 lb/MMBtu (0.040 lb/MMBtu), and Tennessee has no existing IGCC units. *See* Table 1 and table 2 of subpart UUUUU.

[12] *See also* footnotes 4 and 5.

[13] The Tennessee requirements for visible emissions exist at 1200–3–5–.03 in the Tennessee SIP.

[14] The SIP revision identifies boiler number 1 at the TVA Bull Run facility, but that facility was shut down at the end of 2023.

[15] EPA is not proposing to incorporate the August 31, 2022, state effective version of 1200–3–10–.02(1)(b)1.(i)(II); 1200–3–10–.02(1)(b)1.(i)(III); and 1200–3–10–.02(2)(b)2. into the SIP. The August 31, 2022, version of the Rule removes 1200–3–10–.02(1)(b)1.(i)(II) and 1200–3–10–.02(1)(b)1.(i)(III) due to an administrative error and contains language changes to 1200–3–10–.02(2)(b)2. that are not before EPA for approval into the SIP. If EPA takes final action to approve the September 28, 2022, SIP revision, the Agency will update the SIP table at 40 CFR 52.2220(c) to reflect these exceptions.

and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

TDEC did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation byreference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 26, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–04362 Filed 2–29–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2022–0491; FRL–9992–01–OAR]

RIN 2060–AV81

EPA Method 320—Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier Transform Infrared (FTIR) Spectroscopy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes editorial and technical revisions to the Environmental Protection Agency's (EPA's) Method 320 (Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier Transform Infrared (FTIR) Spectroscopy). The proposed revisions include updating the validation and quality assurance (QA) spiking procedures of the method to provide a more performance-based approach with specified acceptance criteria. The proposed revisions will provide flexibility to the stack testing community while ensuring consistent implementation and quality of the measurement results across emissions sources and facilities.

DATES: *Comments.* Comments must be received on or before April 30, 2024.

Public Hearing. The EPA will hold a virtual public hearing on March 29, 2024 if a request for a virtual public hearing is received on or before March 8, 2024. Refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the virtual public hearing.

ADDRESSES: You may submit comments, identified by Docket ID No. EPA–HQ–OAR–2022–0491, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2022–0491 in the subject line of the message.
- Fax: (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2022–0491.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2022–0491, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.—4:30 p.m., Monday—Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Dr. David Nash, Office of Air Quality Planning and Standards, Air Quality Assessment Division (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–9425; fax number: (919) 541–0516; email address: *nash.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. Throughout this document, the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ASTM American Society for Testing and Materials
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
CTS calibration transfer standard
EPA Environmental Protection Agency
FTIR Fourier Transform Infrared
FTP File Transfer Protocol
IR infrared
NAICS North American Industry Classification System
NESHAP National Emissions Standards for Hazardous Air Pollutants
NIST National Institute of Standards and Technology
NSPS New Source Performance Standards
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards OMB Office of Management and Budget
PRA Paperwork Reduction Act
PTFE polytetrafluoroethane
QA quality assurance
RFA Regulatory Flexibility Act
SF6 sulfur hexafluoride
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
VCS Voluntary Consensus Standard
WJC William Jefferson Clinton
μm micron

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

The proposed amendments to Method 320 apply to industries that are subject to certain provisions of 40 CFR parts 60 and 63. The source categories and entities potentially affected are listed in table 1 of this preamble. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be regulated.

TABLE 1—POTENTIALLY AFFECTED SOURCE CATEGORIES

Category	NAICS [a]	Examples of regulated entities
Industry	321211	Plywood and Composite Wood Products.
	324110	Petroleum Refineries.
	325211	Polyvinyl Chloride and Copolymers Production.
	327410	Lime Manufacturing Plants.
	333242	Semiconductor Manufacturing.
	562211	Hazardous Waste Combustors.
	327993	Mineral Wool Production.
	322120	Kraft Pulp and Paper Mills.
	2211, 48621, 92811, 211111, 211112, and 622110.	Stationary Reciprocating Internal Combustion Engines.

[a] North American Industry Classification System (2022).

If you have any questions regarding the applicability of the proposed changes to Method 320, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document and other related information?

The docket number for this action is Docket ID No. EPA–HQ–OAR–2022–0491. In addition to being available in the docket, an electronic copy of the proposed method revisions is available on the Technology Transfer Network (TTN) website at *https://www3.epa.gov/ttn/emc/methods/.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2022–0491, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

B. Participation in Virtual Public Hearing

If a request for a virtual public hearing is received on or before March 8, 2024 the EPA will hold a virtual public hearing on March 29, 2024. To request a virtual public hearing or to register to speak at the virtual hearing, please contact Mr. David Nash at (919) 541–9425 or *nash.dave@epa.gov.* The last day to pre-register to speak at the hearing will be March 22, 2024. On March 26, 2024, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: *https://www3.epa.gov/ttn/emc/methods.*

The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically by emailing it to Mr. David Nash at *nash.dave@epa.gov.* The EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing are posted online at *https://www3.epa.gov/ttn/*

emc/methods. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

III. Background

Method 320 describes the procedures for the measurement of vapor phase organic and inorganic emissions by Fourier Transform Infrared (FTIR) spectroscopy. The EPA promulgated Method 320 along with the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Portland Cement Manufacturing Industry (40 CFR part 63, subpart LLL) on June 14, 1999 (64 FR 31898) under section 112 of the Clean Air Act (CAA) as amended. Since promulgation, the EPA has incorporated the use of Method 320 for demonstrating compliance with emissions standards into numerous NESHAP and New Source Performance Standards (NSPS).

Over the 24-year period since promulgation, the use of FTIR spectroscopy has evolved as testing contractors, analytical laboratories, the EPA, and State entities have developed new standard operating procedures and methods to reflect improvements in sampling and analytical techniques. In 2017, the EPA held a series of informal discussions with stakeholders in the measurement community to identify technical issues related to measuring emissions using FTIR spectroscopy and potential revisions to Method 320. The stakeholders consisted of a cross-section of interested parties including representatives from State regulatory entities, various EPA offices, analytical laboratories, emission testing firms, analytical standards vendors, instrument vendors, and others with experience in FTIR spectroscopy and Method 320. The docket for this action contains summaries of the stakeholder discussions.

IV. Summary of Proposed Revisions to Method 320

In this action, the EPA proposes technical revisions that update the validation and quality assurance (QA) spiking procedures of Method 320 to provide a more performance-based approach. The proposed revisions would more closely align Method 320 with the EPA's approach to emissions measurement, which emphasizes specifying performance-based criteria in test methods. Instead of specifying exactly how stack testers should use or perform a particular method procedure, the method defines the criteria that must be met for a specific method element, which provides stack testers with flexibility while maintaining the quality and reliability of the measurement results. The EPA is also proposing technical revisions and editorial changes to clarify and update the requirements and procedures specified in Method 320, including removing the batch sampling procedures.

A. Section 1.0 (Introduction)

In this action, the EPA proposes to revise the name of section 1.0 from ''Introduction'' to ''Scope and Application,'' to update the introductory paragraph to remove references to the FTIR Protocol, and to remove the note regarding use of sample conditioning systems. The EPA also proposes to renumber and update sections 1.1.1 (Analytes) and 1.1.2 (Applicability) to sections 1.1 and 1.2, respectively, and to replace the existing sections 1.2 (Method Range and Sensitivity), 1.3 (Sensitivity), and 1.4 (Data Quality) with a revised section 1.3 (Data Quality Objectives).

B. Section 2.0 (Summary of Method)

In this action, the EPA proposes to update section 2.0 by revising sections 2.1 (Principle) and 2.2 (untitled) and removing sections 2.3 (Reference Spectra Availability) and 2.4 (Operator Requirements). In section 2.1, the EPA proposes to remove the title and consolidate sections 2.1.1 through 2.1.5 and the introductory paragraph to section 2.2 (Sampling and Analysis) into a single paragraph. In section 2.2, the EPA also proposes to remove the discussion of Beer's Law in section 2.2.1 and to update the references to method evaluation and validation and pre-test procedures.

C. Section 3.0 (Definitions)

In this action, the EPA proposes to remove the following definitions for technical terms that are not needed in the proposed Method 320 and for terms commonly used in the emissions measurement community for which a definition is unnecessary:

- Batch Sampling.
- Concentration.
- Continuous Sampling.
- Emissions Test.
- Gas Cell.
- Independent Sample.
- Interferant.
- Measurement.
- One Hundred Percent Line.
- Quantitation Limit.
- Reference Calibration Transfer Standard (CTS).
- Root Mean Square Difference.
- Sample Analysis.
- Sampling Resolution.
- Sampling System.
- Screening.
- Sensitivity.
- Standard Spectrum.
- Surrogate.
- Test CTS.
- Truncation.
- Zero Filling.
- Validation.
- Validation Run.

The EPA also proposes revisions to five definitions currently used in Method 320. Table 2 of this preamble presents the proposed revisions for each definition.

TABLE 2—PROPOSED REVISIONS TO EXISTING DEFINITIONS

Term	Revision	Proposed definition
Analyte	Clarify that Method 320 can measure more than one analyte per test.	*Analyte* means a compound that the method is intended to measure. This method is a multi-component method; therefore, several analytes may be targeted for a given test.
Background Deviation	Move the performance criteria from the definition to revised section 13.2 (Background Deviation).	*Background deviation* means a deviation from 100% transmittance in any region of the 100% line.
CTS [Calibration Transfer Standard] Standard.	Update the definition to remove the redundant ''standard'' in the term and to specify the acceptable CTS gases.	*Calibration transfer standard (CTS)* means a certified gas calibration standard used to verify instrument stability. For the purposes of this method, the CTS must be ethylene, methane, or carbon dioxide. Other compounds may be used only with the Administrator's approval.

TABLE 2—PROPOSED REVISIONS TO EXISTING DEFINITIONS—Continued

Term	Revision	Proposed definition
Reference Spectrum	Change the term to plural (*i.e.,* ''Reference Spectra''), clarify the definition, and remove the reference to the FTIR Protocol.	*Reference spectra* means a spectra of a pure sample gas obtained at a known concentration under controlled conditions of pressure, temperature, and pathlength.
Run	Replace ''measurements'' with ''samples'' and remove the minimum requirement specifications.	*Run* means a series of samples taken successively from the stack or duct. A test normally consists of a specific number of runs.

The EPA also proposes to add definitions for the key technical terms shown in table 3 of this preamble to improve the clarity of the principles and procedures used in Method 320.

TABLE 3—PROPOSED NEW DEFINITIONS

Term	Proposed definition
Absorbance	The negative logarithm of transmission represented by the relationship $A = -\log(I/I_0)$, where I is the transmitted intensity of light, and I_0 is the incident intensity of light upon a molecule.
Absorptivity	The amount of infrared radiation absorbed by each molecule.
Analyte Spiking	The process of quantitatively adding calibration standards to source effluent. Analyte spiking is used to evaluate the ability of the sample transport and FTIR measurement systems to quantify the target analyte(s).
Analytical Algorithm	The method used to quantify the concentration of both target analyte(s) and additional compounds in a sample matrix that may introduce analytical interferences in each FTIR spectrum.
Analytical Interference	A spectral feature that complicates, and may even prevent, the analysis of an analyte. Analytical interferences can be background or spectral interferences. Background interferences result from a change in light throughput relative to the single beam background. This can be due to factors such as deposits on reflective surfaces and windows, temperature changes, a change in detector sensitivity, a change in infrared source output, or instrument electronics failure. Spectral interferences arise due to the presence of interfering compounds that have overlapping absorption features with the analytes of interest.
Apodization	A mathematical transformation that is used to adjust the instrument line shape for measured peaks. There are various types of apodization functions; the most common are boxcar, triangular, Happ-Genzel, and Beer-Norton functions.
Background Spectrum	A spectrum taken in the absence of absorbing species or sample gas matrix, typically conducted using nitrogen or zero air.
Bandwidth	The width of a spectral feature. This width is commonly listed as the full width at half the maximum of the spectral feature.
Beam Splitter	A device located in the interferometer that divides the incoming infrared radiation into two separate beams that travel two separate paths before recombination.
Classical Least Squares	A method of analyzing multicomponent spectra by scaling reference absorbance spectra to unknown measured spectra.
Double Beam Spectrum	A transmission or absorbance spectrum derived by dividing the sample single beam spectrum by the background spectrum.
Fourier Transform	A mathematical transform that allows the conversion of the detector response as a function of time to intensity as a function of frequency.
Fundamental CTS	An NIST-traceable CTS reference spectrum with known temperature and pressure that has been obtained using an absorption cell with an accurately known optical pathlength.
Interferogram	A pattern that contains the effects of the wave interference that are produced from an interferometer.
Interferometer	A device used to produce interference spectra, by dividing a beam of radiant energy into two or more paths. One path strikes a fixed mirror and the second path strikes a moving mirror generating an optical path difference that varies over time between them. The recombined beams produce constructive and destructive interference as a function of changing pathlength. The Michelson interferometer, used in FTIR instruments, performs this function.
Partial Least Squares	A method for analyzing multicomponent spectra by combining features from principal component and multiple regression analysis. It has been found to be most useful when predicting a set of dependent variables from a large set of independent variables.
Resolution	The minimum separation that two spectral features must have to distinguish one feature from the another.
Retardation	The optical path difference between two beams in an interferometer.
Single Beam Spectrum	The Fourier transformed interferogram representing detector response versus wavenumber.
Test	The series of runs required by the applicable regulation.
Tracer Gas	A stable, non-reactive species that is easily transportable and can be blended in a gas cylinder with a target analyte to confirm the dilution ratio of a dynamic spike.
Transmittance	The amount of infrared radiation that is not absorbed by the sample. Percent transmittance is represented by the following equation: $\%T = (I/I_0) \times 100$.

D. Section 4.0 (Interferences)

In section 4.0 (Interferences), the EPA proposes to consolidate sections 4.1 (Analytical Interferences) and 4.2 (Sampling System Interferences) into revised section 4.0 and to incorporate the discussion of background and spectral interferences in sections 4.1.1 and 4.1.2, respectively, into the

definition of ''Analytical Interference.'' The EPA also proposes to remove sections 4.1.1, 4.1.2, and 4.2.

E. Section 5.0 (Safety)

In this action, the EPA proposes updates to the language of section 5.0, including a recommendation to provide safety data sheets for gas standards to all personnel using the method.

F. Section 6.0 (Equipment and Supplies)

In this action, the EPA proposes to organize the equipment list in section 6.0 into analytical instrumentation and sampling system components. The EPA also proposes to remove the descriptions of the following equipment, which are not needed to perform revised Method 320:

- Calibration/Analyte Spike Assembly.
- Mass Flow Meter.
- Rotameter.
- FTIR Cell Pump.

In this action, the EPA proposes to revise the current descriptions for the equipment components shown in table 4 of this preamble.

TABLE 4—PROPOSED REVISIONS TO EXISTING DEFINITIONS

Equipment	Revision	Proposed description
FTIR Analytical System	Change ''FTIR Analytical System'' to ''FTIR Spectrometer,'' clarify the description, and remove the requirement that the system include a personal computer and processing software.	An instrument that collects and digitizes the spectral interference pattern from an interferometer and mathematically transforms this signal into infrared frequency spectra.
Gas Regulators	Clarify the description and add recommendations regarding materials of construction.	A regulator used to introduce individual gas or gas mixtures from cylinders. Regulator should be constructed of the appropriate materials that minimize analyte adsorption and reactivity.
Gas Sample Manifold	Change ''Gas Sample Manifold'' to ''Gas Distribution Manifold'' and clarify the description to include requirements for accurately diluting calibration gas, monitoring calibration gas pressure, and precisely introducing analyte spikes.	A manifold capable of delivering nitrogen or calibration gases through the sampling system or directly to the FTIR. The calibration gas manifold must provide accurate dilution of the calibration gas as necessary, monitor calibration gas pressure, and introduce analyte spikes into the sample stream (prior to the particulate filter) at a precise and known flowrate.
Particulate Filters	Clarify the description and remove the example cited	A glass wool plug (optional) inserted at the probe tip (for large particulate removal) and a filter (required) connected at the outlet of the heated probe and rated for 99% removal efficiency of 1 micron (μm) aerodynamic particulate.
Polytetrafluoroethane Tubing	Incorporate the description into a single description for ''Tubing''.	Polytetrafluoroethane (PTFE), 316-stainless steel, or other inert material, of suitable length and diameter used to connect cylinder regulators to the gas manifold.
Sampling Line/Heating System.	Change ''Sampling Line/Heating System'' to ''Sample Line'' and clarify that the construction material should minimize adsorption of analytes and the length of line needed.	Heated to prevent sample condensation, and made of stainless steel, PTFE, or other material that minimizes adsorption of analytes. Line length should be the minimum necessary to reach sampling locations.
Sample Pump	Update the minimum flow rate requirements, clarify the options for pump placement, remove the requirement to record the gas cell sample pressure for pumps located downstream of the FTIR system, and remove the example cited.	A leak-free pump with bypass valve, capable of producing a sample flow rate equal to 5 cell volumes per sample cycle. The pump may be positioned upstream or downstream of the FTIR cell. If the pump is positioned upstream of the distribution manifold and FTIR system, use a heated head pump that is constructed from materials non-reactive with the analytes of interest.
Sample Conditioning	Clarify the role of the optional sample conditioning in the sampling system.	An optional part of the sampling system used to dilute or remove particulate matter, water vapor, or other interfering species depending upon the source matrix composition.
Sampling Probe	Clarify the description and remove the example for high-temperature stack samples and the recommendation to use a dilution probe for high-moisture sources.	Glass, stainless steel, PTFE, or other appropriate material to transport analytes to the IR gas cell. The sampling probe must be capable of sustained heating to prevent water condensation and adsorption of analytes.
Stainless Steel Tubing	Incorporate the description into a single description for ''Tubing''.	PTFE, 316-stainless steel, or other inert material, of suitable length and diameter used to connect cylinder regulators to the gas manifold.

The EPA also proposes to add descriptions for the equipment components shown in table 5 of this preamble.

TABLE 5—PROPOSED NEW EQUIPMENT DESCRIPTIONS

Term	Proposed description
Computer/Data Acquisition System.	A computer with compatible FTIR software for control of the FTIR system, acquisition of infrared (IR) data, and analysis of resulting spectra. This system must have enough data storage space to archive all necessary infrared and meta data (see section 11.6 of this method).
Gas Absorption Cell	The container through which the infrared beam interacts with the sample gas. The gas absorption cell must have the ability to monitor the pressure and temperature of the sample gas.
Sampling System	The sampling system consists of the components listed in sections 6.2.1 through 6.2.9 of this method, validated as detailed in section 9.4.

G. Section 7.0 (Reagents and Standards)

In this action, the EPA proposes to rename current section 7.1 from ''Analyte(s) and Tracer Gas'' to ''Analyte(s) and Tracer Standard Gases'' and to require the use of EPA protocol gases (with expanded uncertainty ≤2%) be used for criteria pollutants. The EPA proposes to specify that other pollutants (non-criteria) be dual certified and that target analytes be within 25% of the emission source level or applicable compliance limit. The EPA also proposes to remove the suggestion regarding the use of sulfur hexafluoride (SF_6) tracer gas. The EPA is specifically soliciting comment on the approach of using expanded uncertainty for criteria pollutants as well as not being prescriptive on the tracer that is used.

In section 7.2 (Calibration Transfer Standard(s)), the EPA proposes to remove the requirements to select CTS according to section 4.5 of the FTIR Protocol and to obtain a NIST-traceable standard. The EPA also proposes to clarify that the CTS must be vendor-certified to ±2percent of the cylinder tag value and specifying the list of CTS standard gases that may be used. The EPA is soliciting comments regarding CTS gases and providing standardization there to ensure coverage over a wide wavelength range by using one of the listed gases.

The EPA also proposes to change the name of section 7.3 from ''Reference Spectra'' to ''Chemical Standards,'' and to replace the reference to EPA reference spectra and procedures in the FTIR Protocol for preparing reference spectra with requirements to use NIST-certified or NIST-traceable, vendor-certified chemical standards that meet an accuracy specification of ±5 percent for preparing reference spectra.

H. Section 8.0 (Sampling and Analysis Procedure)

In this action, the EPA proposes to change the name of section 8.0 from ''Sampling and Analysis Procedure'' to ''Sample Collection, Preservation, Storage, and Transport,'' to clarify the purpose of the section in the introductory paragraph, and to remove the list of testing requirements. The EPA proposes to remove the recommendation to obtain an initial spectrum for determining a suitable operational path length and the reference to Figure 1 (sampling train).

In section 8.1 (currently Pretest Preparations and Evaluations), the EPA proposes to rename the section to ''Pretest Preparations'' and to remove reference to section 4 of the FTIR Protocol for determining the optimum sampling system configuration. In section 8.2 (Leak-Check), the EPA proposes to remove the hyphen from the section title, add a statement for the user to follow the leak check procedures in the proposed revised section 11.1 (Leak Check), and remove sections 8.2.1 (Sampling System) and 8.2.2 (Analytical System Leak Check).

In section 8.3 (Detector Linearity), the EPA proposes to replace the text with a statement for the user to follow the detector linearity verification procedures in proposed revised section 11.2 (Detector Linearity). The EPA proposes to remove sections 8.3.1 and 8.3.2, which provide the options to verify detector linearity by varying the power incident on the detector by modifying the aperture setting or by using neutral density filters to attenuate the infrared beam in current, respectively. The EPA also proposed to incorporate section 8.3.3 into the proposed revised section 11.2.

For section 8.4 (Data Storage Requirements), the EPA proposes to replace the data storage requirements with a statement for the user to follow the data storage requirements in new proposed section 11.8 (Digital Data Storage). The EPA also proposes to remove the requirement to prepare a backup copy of the field test spectra and the requirement to record sample conditions, instrument settings, and test records.

In section 8.5 (Background Spectra), the EPA proposes to remove the requirement to evacuate the gas cell and fill the cell with dry nitrogen to ambient pressure. The EPA also proposes to remove the requirement to create a backup copy of the background interferogram and processed single-beam spectrum and remove sections 8.5.1 (Interference Spectra) and 8.5.2 for collection of water vapor spectra.

For section 8.6 (Pre-Test Calibrations), the EPA proposes to revise the requirements for the CTS in section 8.6.1 (Calibration Transfer Standard) and to replace the QA spike requirements in section 8.6.2 (QA Spike) with a statement for the user to follow the QA spike requirements in new proposed section 11.4 (QA Spike).

The EPA proposes to revise section 8.7 (Sampling) by replacing the introductory paragraph with a statement for the user to follow the sampling procedures specified in new proposed section 11.5 (Stratification Check). The EPA also proposes to incorporate the requirements for the signal transmittance from section 8.9 (Sampling QA and Reporting) into the introductory paragraph and to remove sections 8.7.1 (Batch Sampling) and 8.7.2 (Continuous Sampling).

For section 8.8 (Sampling QA and Reporting), the EPA proposes to rename the section ''Post-Run CTS'' and add a requirement to record a post-run CTS. The EPA proposes to incorporate the requirement that sample integration times be sufficient to achieve the required signal-to-noise ratio from section 8.8.1 into a proposed revised section 9.1.1.1. The EPA also proposes to remove sections 8.8.1, 8.8.2, 8.8.3, and 8.8.4 and instead specify the requirements to assign unique file names, store two copies of interferograms and spectra, and prepare sample spectrum documentation, respectively.

For section 8.9 (Signal Transmittance), the EPA proposes to incorporate the requirements for the signal transmittance from section 8.9 into revised section 8.7, and to replace the text in section 8.9 with a proposed requirement to perform post-run QA according to proposed revised section 9.1.2 (Post-Run QA).

In section 8.10 (Post-Test QA), the EPA proposes to move the post-test CTS requirements to new proposed section 11.6 (Post-Test CTS). The EPA also

proposes to move section 8.11 (Post-Test QA) to proposed revised section 9.1.2 (Post-Run QA).

I. Section 9.0 (Quality Control)

In this action, the EPA proposes to rename section 9.0 to ''Quality Assurance and Quality Control'' and to remove the introductory sentence. The EPA proposes to replace section 9.1 (Spike Materials), which specifies the accuracy requirements for spike materials, with revised section 9.1 (Quality Assurance) and to add requirements for performing pre-test QA. The EPA proposes to move the existing section 8.11 to the proposed revised section 9.1.2 and to remove the reference to the FTIR Protocol.

For section 9.2 (Spiking Procedure), the EPA proposes to replace the spiking procedures with a proposed revised section 9.2 (Quality Control) stating that analyte spike procedure in new proposed section 9.3 (Spike Procedure) and the validation procedure in new proposed section 9.4 (Method Validation Procedure) evaluate the sampling system performance and quantify sampling system effects on the measured concentrations. The EPA also proposes to clarify that the method is self-validating, provided that the results meet the performance requirement of the QA spike in new proposed section 11.4, and to remove the requirement that the results from a previous method validation support the use of this method in the application.

J. Section 10.0 (Calibration and Standardization)

In this action, the EPA proposes updates to section 10.0 by replacing section 10.1 (Signal-to-Noise Ratio) with a revised section 10.1 (Analytes) that specifies the procedures for calibrating and standardizing analytes, replacing section 10.2 (Absorbance Path Length) with a revised section 10.2 (Interferents), and replacing section 10.3 (Instrument Resolution) with revised section 10.3 (CTS Absorption Bands). The EPA proposes to replace section 10.4 (Apodization Function) with a revised section 10.4 (Reference Spectra), which would provide users with procedures for collecting reference spectra, and to replace section 10.5 (FTIR Cell Volume) with a revised section 10.5 (Absorption Cell Path Length Determination), which would specify the revised procedures for determining the absorption cell path length. The EPA also proposes to add new section 10.6 (Instrument Resolution) to revise procedures for determining instrument resolution.

K. Section 11.0 (Data Analysis and Calculations)

In this action, the EPA proposes to change the title of current section 11.0 to ''Method Procedures.'' The EPA proposes to replace section 11.1 (Spectral De-Resolution) with a revised section 11.1 that would provide two options to verify that there are no significant vacuum-side leaks (*i.e.,* the low-flow test and the vacuum-decay test) and to replace section 11.2 (Data Analysis) with a revised section 11.2 that would incorporate the requirements in the current introductory paragraph for section 8.3 and requirements in section 8.3.3. The EPA also proposes to add several new sections as summarized in table 6 of this preamble. The EPA requests comment on these leak check approaches.

TABLE 6—PROPOSED ADDITIONS TO SECTION 11

Section	Description
11.3 (Gas Cell Pathlength) ..	Requires verification of the gas cell pathlength according to the procedures in revised section 10.6.4.
11.4 (QA Spike)	Clarifies that the QA spike procedure assumes that the method has been validated for each of the target analyte at the source, rather than for only some of the target analytes as specified in current section 8.6.2 and presents the revised QA spike procedures for use of a certified standard or use of a non-certified standard.
11.5 (Sampling)	Specifies the revised sampling procedures, including performing a stratification check.
11.6 (Post-Test CTS)	Requires comparison of the pre- and post-test CTS spectra.
11.7 (Record and Report)	Specifies the revised recording and reporting requirements.
11.8 (Digital Data Storage) ..	Incorporates the requirements from section 8.4.

L. Section 12.0 (Method Performance Data Analysis and Calculations)

For section 12.0, the EPA proposes to rename the section ''Data Analysis and Calculations'' and to replace section 12.1 (Spectral Quality) with a revised section 12.1 that specifies the required capabilities of the concentration algorithm. The EPA also proposes to remove section 12.2 (Sampling QA/QC).

M. Section 13.0 (Method Validation Procedure)

In this action, the EPA proposes to rename current section 13.0 from ''Method Validation Procedure'' to ''Method Performance'' and to remove the introductory paragraph. The EPA also proposes to replace section 13.1 with a revised section 13.1 (Detection Level), which would include the proposed requirement that the detection level must be within 20 percent of the applicable compliance limit, and to replace section 13.2 (Batch Sampling) with a revised section 13.2 (Background Deviation), which would incorporate the performance criteria in the current definition of ''Background Deviation.''

N. Section 14.0 (Pollution Prevention)

In section 14.0, the EPA proposes to remove the sentence describing the mass of HAP that may be emitted by the extracted sample gas for a typical 3-hour validation run.

O. Section 15.0 (Waste Management)

The EPA is not proposing any changes to section 15.0 in this action.

P. Section 16.0 (References)

In section 16.0, the EPA proposes to remove references 1, 2, 4, and 5 through 7, and to add the reference citation and link for the FTIR Protocol (the current addendum to Method 320).

Q. Section 17.0 (Tables, Diagrams, Flowcharts, and Validation Data)

In this action, the EPA proposes to add new section 17.0, to update Figure 1 (Extractive FTIR Sampling System), and to remove Table 1 (Example Presentation of Sampling Documentation) and Figure 2 (Fractional Reproducibility).

R. Addendum to Test Method 320

In this action, the EPA proposes to remove the addendum and associated appendices from Method 320. The proposed revised section 16.0 will include a reference citation and link for the FTIR Protocol.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. The revisions being proposed in this action to Method 320 do not add information collection requirements but make corrections, clarifications, and updates to existing testing methodology.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This proposed action will not impose any requirements on small entities. The proposed revisions to Method 320 do not impose any requirements on regulated entities. Rather, the proposed changes improve the quality of the results when required by other rules to use Method 320. Revisions proposed for Method 320 allow contemporary advances in analysis techniques to be used.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175. The revisions being proposed in this action make corrections, clarifications, and updates to existing testing methodology. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order.

Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. While the EPA identified ASTM D6348 as being potentially applicable, the Agency does not propose to use it. Currently, ASTM International (formerly the American Society for Testing and Materials) is revising ASTM D6348 (Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface FTIR Spectroscopy), which specifies sampling and analytical procedures that are similar to EPA Method 320. Because the revised ASTM D6348 may be an equivalent method, the EPA will reconsider it when the revised ASTM D6348 becomes available.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that this type of action does not concern human health or environmental conditions and, therefore, cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns. This action would correct, update, and clarify Method 320 to improve the quality of the results when used.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Method 320, FTIR, Test methods.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Appendix A to part 63 is amended by revising Test Method 320 to read as follows:

Appendix A to Part 63—Test Methods

* * * * *

Test Method 320—Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier Transform Infrared (FTIR) Spectroscopy

1.0 Scope and Application

This method describes the extractive sampling and quantitative analysis of gaseous compounds in stationary source effluent using Fourier transform infrared (FTIR) spectrometry. Analysis procedures, quality control, and quality assurance requirements are included to assure that you, the tester, collect data of known and acceptable quality for each testing program.

1.1 Analytes. This method is designed to measure individual gas phase hazardous air pollutants (HAPs) for which reference spectra have been developed. Other gas phase compounds can also be measured with this method so long as reference spectra obtained according to section 10.5 of this method are used. Candidate gaseous compounds must have infrared features (*i.e.,* a non-zero dipole moment) to be detected using this method.

1.2 Applicability. This method applies to the analysis of vapor phase compounds that absorb energy in the mid-infrared spectral region, from about 400 to 4000 cm^{-1} (25 to 2.5 μm). The method is used to determine compound-specific concentrations in a multi-component gas sample extracted from a stack or ducted source.

1.3 Data Quality Objectives (DQOs). Method 320 contains performance-based DQOs to provide data of known quality. With this method, you must evaluate the accuracy and precision of data in each gas matrix and at actual emissions concentrations that are encountered during its application. Data quality requirements include appropriate field evaluation procedures.

2.0 Summary of Method

2.1 A sample is extracted from the source at a constant rate. Samples are conditioned, if necessary, and transported via heated lines composed of inert material (to prevent

condensation of the measured compounds) from the source to a heated cell in the FTIR, wherein data are generated by directing an infrared beam through the sample to a detector. Most molecules absorb infrared radiation, and the absorbance occurs in a characteristic and reproducible pattern. FTIR data are transformed into a frequency-based spectra and curve fitting calculations (*e.g.,* classical least squares, partial least squares) are used to determine compound quantities and minimize residuals. Target compound concentrations are determined using their unique infrared absorption features and reference calibration spectra. This method may be used simultaneously for multiple gaseous components.

2.2 Measurement evaluation and validation for a source gas matrix are described in section 9.2 of this method. Pre-test preparation and procedures are described in section 8.1 of this method. These procedures are designed to verify that an appropriate sampling system has been chosen and performs in a manner that provides results of known and acceptable quality is also discussed. Dynamic spiking is used to confirm target compound transport accuracy in potentially complex matrices.

3.0 Definitions

3.1 *Absorbance* means the negative logarithm of transmission represented by the relationship $A = -\log(I/I_0)$, where I is the transmitted intensity of light, and I_0 is the incident intensity of light upon a molecule.

3.2 *Absorptivity* means the amount of infrared radiation absorbed by each molecule.

3.3 *Analyte* means a compound that the method is intended to measure. This method is a multi-component method; therefore, several analytes may be targeted for a given test.

3.4 *Analyte spiking* means the process of quantitatively adding calibration standards to source effluent. Analyte spiking is used to evaluate the ability of the sample transport and FTIR measurement systems to quantify the target analyte(s).

3.5 *Analytical algorithm* means the method used to quantify the concentration of both target analyte(s) and additional compounds in a sample matrix that may introduce analytical interferences in each FTIR spectrum.

3.6 *Analytical interference* means a spectral feature that complicates, and may even prevent, the analysis of an analyte. Analytical interferences can be background or spectral interferences. Background interferences result from a change in light throughput relative to the single beam background. This can be due to factors such as deposits on reflective surfaces and windows, temperature changes, a change in detector sensitivity, a change in infrared source output, or instrument electronics failure. Spectral interferences arise due to the presence of interfering compounds that have overlapping absorption features with the analytes of interest.

3.7 *Apodization* means a mathematical transformation used to adjust the instrument line shape for measured peaks. There are various types of apodization functions; the most common are boxcar, triangular, Happ-Genzel, and Beer-Norton functions.

3.8 *Background deviation* means a deviation from 100% transmittance in any region of the 100% line.

3.9 *Background spectrum* means a spectrum taken in the absence of absorbing species or sample gas matrix, typically conducted using nitrogen or zero air.

3.10 *Bandwidth* means the width of a spectral feature. This width is commonly listed as the full width at half the maximum of the spectral feature.

3.11 *Beam splitter* means a device located in the interferometer that divides the incoming infrared radiation into two separate beams that travel two separate paths before recombination.

3.12 *Calibration transfer standard (CTS)* means a certified gas calibration standard used to verify instrument stability. For the purposes of this method, the CTS must be ethylene, methane, or carbon dioxide. Other compounds may be used only with administrator approval.

3.13 *Classical least squares (CLS)* means a method of analyzing multicomponent spectra by scaling reference absorbance spectra to unknown measured spectra.

3.14 *Double beam spectrum* means a transmission or absorbance spectrum derived by dividing the sample single beam spectrum by the background spectrum.

Note: *The term ''double-beam'' is used elsewhere to denote a spectrum in which the sample and background interferograms are collected simultaneously along physically distinct absorption paths. In this method, the term denotes a spectrum in which the sample and background interferograms are collected at different times along the same absorption path.*

3.15 *Fourier transform* means a mathematical transform that allows the conversion of the detector response as a function of time to intensity as a function of frequency.

3.16 *Fundamental CTS* means an NIST-traceable CTS reference spectrum with known temperature and pressure, that has been obtained using an absorption cell with an accurately known optical pathlength.

3.17 *Interferogram* means a pattern that contains the effects of the wave interference that are produced from an interferometer.

3.18 *Interferometer* means a device used to produce interference spectra, by dividing a beam of radiant energy into two or more paths. One path strikes a fixed mirror, and the second path strikes a moving mirror generating an optical path difference that varies over time between them. The recombined beams produce constructive and destructive interference as a function of changing pathlength. The Michelson interferometer, used in FTIR instruments, performs this function.

3.19 *Partial least squares* means a method for analyzing multicomponent spectra by combining features from principal component and multiple regression analysis. It has been found to be most useful when predicting a set of dependent variables from a large set of independent variables.

3.20 *Reference spectra* means a spectra of a pure sample gas obtained at a known concentration under controlled conditions of pressure, temperature, and pathlength.

3.21 *Resolution* means the minimum separation that two spectral features must have to distinguish one feature from the another.

3.22 *Retardation* means the optical path difference between two beams in an interferometer.

3.23 *Run* means a series of samples taken successively from the stack or duct. A test normally consists of a specific number of runs.

3.24 *Single beam spectrum* means the Fourier transformed interferogram representing detector response versus wavenumber.

3.25 *Test* means the series of runs required by the applicable regulation.

3.26 *Tracer gas* means a stable, non-reactive species that is easily transportable and can be blended in a gas cylinder with a target analyte to confirm the dilution ratio of a dynamic spike.

3.27 *Transmittance* means the amount of infrared radiation that is not absorbed by the sample. Percent transmittance is represented by the following equation: $\%T = (I/I_0) \times 100$.

4.0 Interferences

Interferences to precise, accurate measurement using FTIR include both analytical interferences defined in section 3.6 of this method, and sampling system interferences. Sampling system interferences are conditions that prevent analytes from reaching the instrument due to factors such as sample line temperature, sample line materials, condensation, and sample transport time.

5.0 Safety

This method does not address all potential safety risks associated with its use. The hazards of performing this method are those associated with any stack sampling method. Anyone performing this method must follow safety and health practices consistent with stationary source sampling, including applicable legal and site-specific safety requirements. Many HAPs measured by this method are suspected toxic or hazardous and may present serious health risks. Exposure to these compounds from stack gas or from spiking standards should be avoided. Ensure safety data sheets (SDS) for gas standards are available to all personnel using this method. When using analyte standards, ensure that gases are properly vented and that the gas handling system is leak free.

6.0 Equipment and Supplies

The equipment and supplies described in this section are based on the schematic of the example sampling system shown in Figure 1.

6.1 Analytical Instrumentation.

6.1.1 Fourier Transform Infrared (FTIR) Spectrometer. An instrument that collects and digitizes the spectral interference pattern from an interferometer and mathematically transforms this signal into infrared frequency spectra.

6.1.2 Computer/Data Acquisition System. A computer with compatible FTIR software for control of the FTIR system, acquisition of infrared (IR) data, and analysis of resulting spectra. This system must have enough data

storage space to archive all necessary infrared and meta data (see section 11.6 of this method).

6.1.3 Gas Absorption Cell. The container through which the infrared beam interacts with the sample gas. The gas absorption cell must have the ability to monitor the pressure and temperature of the sample gas.

6.2 Sampling System. The sampling system consists of the components listed in sections 6.2.1 through 6.2.9 of this method and validated as detailed in section 9.4.

6.2.1 Sampling Probe. Glass, stainless steel, polytetrafluoroethane (PTFE), or other appropriate material to transport analytes to the IR gas cell. The sampling probe must be capable of sustained heating to prevent water condensation and adsorption of analytes.

Note: *High stack sample temperatures may require special steel or cooling of the probe. For very high moisture sources, it may be desirable to use a dilution probe. Special materials or configurations may be required for probes to traverse ducts or stacks.*

6.2.2 Particulate Filters. A glass wool plug (optional) inserted at the probe tip (for large particulate removal) and a filter (required) connected at the outlet of the heated probe and rated for 99% removal efficiency of 1 micron aerodynamic particulate.

6.2.3 Sampling Line. Heated to prevent sample condensation, and made of stainless steel, PTFE, or other material that minimizes adsorption of analytes. Line length should be the minimum necessary to reach sampling locations.

6.2.4 Sample Pump. A leak-free pump with bypass valve, capable of producing a sample flow rate equal to 5 cell volumes per sample cycle. The pump may be positioned upstream or downstream of the FTIR cell. If the pump is positioned upstream of the distribution manifold and FTIR system, use a heated head pump that is constructed from materials non-reactive with the analytes of interest.

6.2.5 Gas Distribution Manifold. A manifold capable of delivering nitrogen or calibration gases through the sampling system or directly to the FTIR. The calibration gas manifold must provide accurate dilution of the calibration gas as necessary, monitor calibration gas pressure, and introduce analyte spikes into the sample stream (prior to the particulate filter) at a precise and known flowrate.

6.2.6 Sample Conditioning. An optional part of the sampling system used to dilute or remove particulate matter, water vapor, or other interfering species depending upon the source matrix composition.

6.2.7 Gas Regulator. A regulator used to introduce individual gas or gas mixtures from cylinders. Regulator should be constructed of the appropriate materials that minimize analyte adsorption and reaction with the regulator.

6.2.8 Tubing. PTFE, 316-stainless steel, or other inert material, of suitable length and diameter used to connect cylinder regulators to the gas manifold.

7.0 Reagents and Standards

7.1 Analyte(s) and Tracer Standard Gases. Analyte(s) and tracer gases must come from gas cylinder(s). Criteria pollutants must use EPA Protocol gases, or equivalent (*i.e.,* compressed gas standards with an expanded uncertainty of ≤2%). All other pollutants must use ''dual certified'' compressed gas standards (*i.e.,* standards certified by two independent techniques). Target analyte concentrations should be within ±25% of the emission source levels or the applicable compliance limit unless otherwise prescribed in the applicable standard. If practical, the analyte standard cylinder shall also contain the tracer gas at a concentration that gives a measurable absorbance at a dilution factor of at least 10:1.

7.2 Calibration Transfer Standard (CTS). The CTS standard must be NIST-traceable, per methods specified in the *EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,* to ±2% of the cylinder tag value. The CTS standard must be one of the following gases: ethylene, methane, or carbon dioxide.

7.3 Chemical Standards. Chemical standards used to generate reference spectra must be NIST certified via gravimetric measurement, or NIST-traceable and vendor-certified accurate to within ±5%.

8.0 Sample Collection, Preservation, Storage, and Transport

8.1 Pretest Preparations. Determine the optimum sampling system configuration for measuring the target analytes. Use available information to make reasonable assumptions about moisture content and other interferences.

8.1.1 Sampling System.

8.1.1.1 Based on the source gas characteristics (*e.g.,* temperature, pressure profiles, moisture content, target and interference physical characteristics, and particulate concentration), select the equipment for extracting and transporting gas samples.

8.1.1.2 Select the techniques and/or equipment for the measurement of sample pressures and temperatures in the sample cell.

8.1.1.3 Heat sample transport lines to maintain sample temperature at least 10 °F (5 °C) above the dew point for all sample constituents. Sample transport lines and system components must be heated sufficiently through their entire length to transport target compounds to the IR sample cell.

8.1.2 Select Spectroscopic Setup. Select a spectroscopic configuration for the application. Approximate the absorption pathlength, sample pressure, absolute sample temperature, and signal integration period necessary for the analysis. Specify the nominal minimum instrumental linewidth (MIL) of the system.

8.1.3 Analytical Program.

8.1.3.1 Prepare an analysis algorithm for acquired spectra. Use as input, reference spectra of all target analytes and expected interferents. Include reference spectra of additional interferent compounds in the program if their presence (even if transient) in the samples is considered possible. The program output must be in ppmv (or parts per billion by volume [ppbv]) and must correct for differences between the reference pathlength (L_R), temperature (T_R), and pressure (P_R), and the actual conditions used for collecting the sample spectra.

8.1.3.2 Choose a mathematical technique (*e.g.,* classical least squares, partial least squares, inverse least squares) for analyzing spectral data by comparison with reference spectra.

8.1.3.3 Reference spectra incorporated in the program must either bracket the observed sample matrix concentration or use a direct injection to verify the calibration curve. Additionally, you must use a sufficient number (>3) of reference spectra (or reference spectra plus direct injection checks for low concentration regimes) in the bracketed range to demonstrate linearity in that concentration range. Alternatively, if the matrix concentration is expected to be within three times the detection limit of this method, you may use calculated reference spectra (*i.e.,* HITRAN or PNNL) at the lower end of the bracketing range.

8.1.3.4 Analysis regions selected for a target compound(s) must have an absorbance value of less than 1. You must select specific wavelengths in each region where the target analyte does not overlap with an interfering compound and use the selected wavelengths throughout the entire validation (section 9.4), QA spiking (section 11.4), and testing campaign.

8.2 Leak Check. To conduct the leak check, follow the procedures specified in section 11.1.

8.3 Detector Linearity. To verify detector linearity, follow the procedures specified in section 11.2.

8.4 Data Storage Requirements. For these requirements, follow the procedures specified in section 11.8.

8.5 Background Spectrum. Flow dry nitrogen through the gas cell and verify that no significant amounts of absorbing species are present. Collect a background spectrum, using a signal averaging period equal to or longer than that being used for averaging of source sample spectra. Assign a unique file name to the background spectrum.

8.6 Pre-Test Calibrations.

8.6.1 Calibration Transfer Standard. Flow the CTS gas through the cell and verify that the measured concentration is stable to within the uncertainty of the gas standard. Record the spectrum. Additionally, measure the linewidth of appropriate CTS band(s) to verify instrument resolution. Alternatively, compare CTS spectra to a reference CTS spectrum, if available, measured at the nominal resolution.

8.6.2 QA Spike. Conduct a QA spike per the instructions in section 11.4 of this method.

8.7 Sampling. See section 11.5 of this method. While sampling, monitor the signal transmittance. If the transmittance (relative to background) changes by 5% or more in any analytical spectral region, obtain a new background spectrum.

8.8 Post-Run CTS. After the sampling run, record another CTS spectrum.

8.9 Perform post-run QA per section 9.1.2 of this method.

9.0 Quality Assurance and Quality Control

9.1 Quality Assurance (QA).

9.1.1 Pre-Test QA.

9.1.1.1 Prior to testing, verify that the sample integration time is sufficient to achieve the required signal-to-noise ratio.

9.1.1.2 Assign a unique file name to each spectrum.

9.1.1.3 For reporting and recording requirements, see sections 11.6 and 11.7 of this method.

9.1.2 Post-Test QA.

9.1.2.1 Inspect the sample spectra immediately after the run to verify the gas matrix composition was close to the expected matrix composition.

9.1.2.2 Verify that the sampling and instrumental parameters were appropriate for the actual stack conditions. For example, if the moisture of the sampled gas was much higher than anticipated, a shorter pathlength cell or more dilute sample may be needed.

9.1.2.3 Compare the pre- and post-test CTS spectra. The peak absorbance in the pre- and post-test CTS must be ±5% of the mean value.

9.2 Quality Control (QC). The analyte spike procedure in section 9.3 of this method and the validation procedure in section 9.4 of this method are used to evaluate the performance of the sampling system and to quantify sampling system effects, if any, on the measured concentrations. This method is self-validating provided that the results meet the performance requirement of the QA spike in section 11.4 of this method.

9.3 Spike Procedure. Spiking must be done per a standard addition procedure consisting of measuring the source emissions concentration (*i.e.,* native source gas concentration), addition of reference gas, and measurement of the resulting standard addition (SA) elevated source gas concentration. Spiking must be done dynamically accounting for the spike dilution of sample gas with the addition of the reference gas.

9.3.1 Each dynamic spike (DS) or SA replicate consists of a measurement of the source emissions concentration (native stack concentration) with and without the addition of the species of interest. With a single FTIR, you must alternate the measurement of the native and SA-elevated source gas so that each measurement of SA-elevated source gas is immediately preceded and followed by a measurement of native stack gas. Introduce the SA gases in such a manner that the entire sampling system is challenged. Alternatively, you may use an independent FTIR and sampling system to measure the native source concentration throughout each standard addition.

9.3.1.1 Pre and post-test spiking must consist of at least 3 replicates. A replicate is defined as the following measurement sequence: native gas concentration, SA-elevated gas concentration, native gas concentration. In addition to the pre-test spike instance, spiking must also be performed post-test.

9.3.1.2 It is recommended that spiking be performed after each run to ensure continued compliance with the required spike recovery criteria. If spiking is not performed after each run and the post-test spike fails, all data for that test are invalid. However, if spiking is performed after each run, data bracketed on each end by a successful spike are valid test data.

9.3.2 Your spike gas flow rate must not contribute more than 10% of the total volumetric flow rate through the FTIR.

9.3.3 Determine the response time (RT) of the system. First, inject zero air into the system. For standard addition RT determination, next measure the native stack concentration of the species to be spiked. The concentration has stabilized when variability appears constant for five minutes.

9.3.4 You must determine a dilution factor (DF) for each dynamic spike. Determine the DF via a tracer, and use the following equation for a source where the tracer is not native to the source emissions:

$$DF = \frac{M_{spiked\ tracer}}{C_{tracer\ spiked}} \qquad \text{Equation 1}$$

Where:

$M_{spiked\ tracer}$ = the measured diluted tracer gas concentration in a spiked sample.

$C_{tracer\ spiked}$ = the tracer gas concentration injected with the spike gas.

Note: *Use consistent concentration units for each variable in Equation 1.*

In instances where the tracer gas is native to the source emissions, use the following equation:

$$DF = \frac{M_{spiked\ tracer} - M_{native\ tracer}}{C_{native\ tracer} - M_{native\ tracer}} \qquad \text{Equation 2}$$

Where:

$M_{native\ tracer}$ = the measured tracer concentration present in the native effluent gas.

$C_{native\ tracer}$ = the undiluted tracer gas concentration in the cylinder.

Note: *Use consistent concentration units for each variable in Equation 2.*

9.3.4.1 Standard Addition Response. The standard addition response (SAR) represents the difference between the measured native source concentration and the concentration measured upon introduction of the standard addition (source + SA) via dynamic spike. Calculate the SAR via the following equation:

$$SAR = MC_{spiked} - (1 - DF) * MC_{native} \qquad \text{Equation 3}$$

Where:

MC_{spiked} = the measured reference analyte concentration.

MC_{native} = the measured concentration of the analyte in the native effluent.

Note: *Use consistent concentration units for each relevant variable in Equation 3.*

9.3.4.2 Effective Spike Addition. The effective spike addition (ESA) is the expected increase in the measured concentration as a result of injecting a spike. For the section 11.4 QA spike, the ESA must be within 50% of the native stack concentration. Calculate the ESA with the following equation, for use when using a certified cylinder:

$$ESA = DF * (C_{spike} - MC_{native}) \qquad \text{Equation 4}$$

Where:

C_{spike} = the certified reference analyte concentration.

When using a non-certified cylinder, replace the C_{spike} term in Equation 4, with MC_{spiked}.

Note: *Use consistent concentration units for each relevant variable in Equation 4.*

9.3.4.3 Spike Recovery. The degree to which the SAR and the ESA agree represents the spike recovery (SR), or the ability to measure the spiked analyte on top of the amount of that analyte native to the stack.

Spike recovery is calculated according to the following equation:

$$SR = \frac{SAR}{ESA} \qquad \text{Equation 5}$$

9.3.4.4 Spiking Procedure for Highly Variable Sources. In some instances, a source may be encountered that is too variable for the procedures listed in sections 9.3 and 11.4 of this method. A highly variable source, for which this procedure may be used is defined as a source that varies randomly and by more than 25% from data point to point, where two consecutive points are less than or equal to a minute apart. For these types of sources, the approach outlined in section 9.3.5.4.1 of this method may be used.

9.3.4.4.1 Dual FTIR and Extractive Systems Approach. This field approach is performed using two independent FTIRs and sample extraction systems that use tubing of the same length and diameter and that pull the sample at approximately the same flow rate. One FTIR characterizes the fluctuations of the target analyte(s) over time and the second FTIR performs the spike recoveries. Note that testers can use either a single probe attached to both systems or separate probes for each system with the probe tips co-located (within 6 inches) in the sample duct. In either case, it is mandatory for the spike to occur prior to the PM filter. Perform the spiking procedure as follows.

Note: *This procedure assumes that the dilution factor is calculated as stated in EPA Method 320 or ASTM D6348–12e from either a spectroscopic tracer or metered flows.*

9.3.4.4.1.1 After positioning the FTIR probes accordingly, begin pulling sample gas into both FTIR sample analysis cells. Use the same sampling period and the identical quantification method (*i.e.,* same reference spectra for construction and the same regions for quantification) for each FTIR.

a. Sample the source gas stream for approximately 15 minutes, collecting at least 8 spectra on each FTIR.

b. Calculate the average concentration of the target analyte(s) for each FTIR. If the average concentrations determined using the two FTIRs are not within 10%, either the analysis routines were not identical, the timing was not consistent, or the sample system or FTIR cell in one of the FTIRs is reacting with the target analyte(s). *Note:* If the average concentrations are not within 10%, the spike recovery criterion will be more difficult to achieve.

9.3.4.4.1.2 If the average concentrations agree within 10%, begin flow of the analyte spike into one of the FTIRs. At this point, the spiked FTIR should have a consistent offset to the unspiked FTIR. After this offset is consistent, collect a minimum of 8 data points.

9.3.4.4.1.3 Calculate the difference between the average concentration of the spiked data and the average concentration of the unspiked data (*i.e.,* the average concentration of the spike) using equation 6 of this method.

9.3.4.4.1.4 Calculate the recovery (equation 7) of the spike using the predicted spiked concentration by the dilution factor (as determined per the reference method used) and the resultant from Step 3 (equation 6).

$$SV = \frac{1}{n}\sum_{i=1}^{n} S_i - \frac{1}{p}\sum_{i=1}^{p} U_p \qquad \text{Equation 6}$$

Where:

SV = Concentration of target analyte spiked into the extracted gas stream.

S_i = Individual concentration results from the spiked FTIR.

n = Number of individual spiked concentration measurements collected.

U_p = Individual concentration results from the unspiked FTIR (native gas concentration).

p = Number of individual, unspiked concentration measurements collected.

Note: *Use consistent concentration units for each relevant variable in Equation 6.*

$$Recovery = \left(\frac{SV}{(DF * Spike\ Cylinder\ Concentration)}\right) \qquad \text{Equation 7}$$

Where:

SV = Spiked concentration as calculated from Equation 6.

DF = Dilution Factor as determined from tracer in spike gas standard or from flows.

Spike Cylinder Concentration = Concentration of target analyte(s) from spike gas standard (*e.g.,* determined from direct injection or from certified cylinder tag value).

Note: *Use consistent concentration units for each relevant variable in Equation 7.*

9.4 Method Validation Procedure.

This validation procedure, which is based on EPA Method 301 (40 CFR part 63, appendix A), must be used to validate this method for the analytes in a gas matrix. Analytes that have not been validated for a particular source type may not be measured using Method 320. Validation at one source may also apply to another type of source, if it can be shown that the exhaust gas characteristics are similar at both sources.

9.4.1 Use section 5.3 of Method 301 (40 CFR part 63, appendix A), the Analyte Spike procedure, with these modifications. The statistical analysis of the results follows section 6.3 of EPA Method 301. Section 3 of this method defines terms that are not defined in Method 301.

9.4.2 The analyte spike is performed dynamically. This means the spike flow is continuous and constant as spiked samples are measured.

9.4.3 Introduce the spike gas at the back of the sample probe.

9.4.4 Spiked effluent is carried through all sampling components downstream of the probe.

9.4.5 A single FTIR system (or more) may be used to collect and analyze spectra (not quadruplicate integrated sampling trains).

9.4.6 All of the validation measurements are performed sequentially in a single ''run'' (section 3.23 of this method).

9.4.7 The measurements analyzed statistically are each independent (section 3.22 of this method).

9.4.8 A validation data set must consist of 12 or more spike replicates.

10.0 Calibration and Standardization

10.1 Analytes. Select the required detection level (DL_i) and maximum permissible analytical uncertainty (AU_i) for each analyte (1 to i). The required DL must be equal to or greater than the method DL determined via section 13.1 of this method. Estimate, if possible, the maximum expected concentration for each analyte ($CMAX_i$). The expected measurement range is then bounded by DL_i and $CMAX_i$ for each analyte.

10.2 Interferents. List all potential interferents applicable to your source matrix. Collect or obtain spectra of known and suspected interferences that were acquired using the same optical system that will be used in the field measurements. You may also use calculated spectra from sources such as HITRAN as long as the spectral resolution matches the resolution of source test sample spectra. These interferents must be included in the analytical algorithm used to fit FTIR spectra for quantitation.

10.3 CTS Absorption Bands. Absorption bands used for CTS quantitation must be at least ten times the root mean square (RMS) value of the noise equivalent absorbance (NEA) of a wavelength range nearest to that absorption band. This value, NEA_{RMS}^{CTS} can be determined as follows:

10.3.1 Determine the absolute noise equivalent absorption (NEA) for an analytical region by flowing nitrogen or zero air through the gas sample cell. The NEA is the peak-to-peak noise in a spectrum resulting from collection of two successive background spectra. Therefore, collect two background spectra in succession while the nitrogen or zero air is continuously flowing through the cell. Note that the same averaging time must be used for NEA determination as will be used for actual sample collection.

10.3.2 Calculate NEA_{RMS}^{CTS} per the following equation:

$$NEA_{RMS}^{CTS} = \sqrt{\frac{1}{n}\sum_{j=1}^{N_{CTS}}(NEA_i^{CTS})^2}$$ Equation 8

Where:

N_{CTS} = the number of absorbance points in the analysis region for the CTS.

NEA_i^{CTS} = the individual absorbance values of the noise spectrum in the analysis region, i.

10.4 Reference Spectra. Obtain reference spectra for each analyte, interferant, surrogate, CTS, and tracer.

10.4.1 The tester must report traceability and other pertinent information for each reference spectrum, for each compound, including: temperature, pressure, concentration, cylinder source and specifications, spectral regions of analysis used for quantitation (with specific wavelength ranges used), and calibration fit equations and correlations.

10.4.2 If commercially prepared, or other available reference libraries are used to quantify data, the FTIR spectral resolution and line position, cell pathlength, temperature and pressure, and apodization function must be known and reported. Resolution, line position, and apodization function used for collection of sample spectra must be the same as those of the reference spectra used for quantitation.

10.4.3 Reference spectra for each target compound must bracket the concentration of that compound in the sample stream.

10.4.3.1 In the case where traceable reference spectra provided by the FTIR manufacturer do not bracket the concentration of a particular compound, two options are available. A direct injection of the compound of interest (NIST traceable and certified to ±5%) into the FTIR at a concentration lower than that found in the sample stream and within three times the method detection level, may be performed to demonstrate the appropriateness of the calibration line at this level. To perform this check, while directly injecting the compound of interest into the FTIR, wait for the concentration of the compound to stabilize. Once stable, verify that the concentration as determined via the calibration curve is within 10% of the cylinder value or else do not proceed with testing.

10.4.3.2 Alternatively, calculated spectra, such as those from HITRAN or PNNL, may be used at the lower end of the bracketing range, within three times the method detection level, as well.

10.4.4 Collecting Reference Spectra. In some cases, it may be necessary for the tester to collect reference spectra prior to testing. The procedure found in this section is to be used in such a case.

10.4.4.1 Record a set of CTS spectra.

10.4.4.2 Collect a set of the reference spectra at two or more concentrations in triplicate over the desired concentration range. The top of the concentration range must be less than 10 times that of the bottom of the range.

10.4.4.3 Collect a second set of CTS spectra. The maximum accepted concentration for each compound shall be higher than the maximum estimated concentration for both analytes and known interferents in the effluent gas. For each analyte, the minimum accepted concentration shall be no greater than ten times the concentration-pathlength product of that analyte at its required detection limit.

10.4.4.4 Permanently store the background and interferograms digitally, and separately. Document details of the mathematical process (*i.e.,* apodization function) for generating the spectra from these interferograms. Record sample pressure (P_r), sample temperature (T_r), reference absorption pathlength (L_r), and interferogram signal integration period (t_{sr}).

10.5 Absorption Cell Path Length Determination.

10.5.1 Flow the CTS through the FTIR cell. Once the absorbance of two consecutive spectra differ by less than or equal to the uncertainty of the cylinder standard, the CTS spectrum may be recorded. Note that the CTS gas must be one of the following gases: ethylene, methane, or carbon dioxide.

10.5.2 Record a set of the absorption spectra of the CTS, and record the temperature, pressure, and concentration of the CTS.

10.5.3 Record the instrument manufacturer's nominal absorption pathlength, nominal spectral resolution, and the CTS signal integration period.

10.5.4 Calculate the reference cell absorption pathlength, according to the following equation:

$$L_r = L_f\left(\frac{T_r}{T_f}\right)\left(\frac{P_f}{P_r}\right)\left(\frac{C_f}{C_r}\right)\left\{\frac{A_r}{A_f}\right\}$$ Equation 9

Where:

L_r = reference cell absorption pathlength.

L_f = fundamental CTS absorption pathlength.

T_r = absolute temperature of reference CTS gas.

T_f = absolute temperature of fundamental CTS gas.

P_r = absolute pressure of reference CTS gas.

P_f = absolute pressure of fundamental CTS gas.

C_r = concentration of the reference CTS gas.

C_f = concentration of the fundamental CTS gas.

$\{A_r/A_f\}$ = ratio of the reference CTS absorbance to the fundamental CTS absorbance, determined by classical least squares, integrated absorbance area, spectral subtraction, or peak absorbance techniques.

10.6 Instrument Resolution.

10.6.1 Flow ambient air through the gas cell.

10.6.2 Verify the instrument resolution using a water absorbance peak near either 1,918 cm^{-1}, 3,050 cm^{-1}, or 3,920 cm^{-1}.

10.6.3 The absorbance of the peak being used for the resolution determination should be approximately 0.25 absorbance units. Mix additional humified air or nitrogen with the ambient flow, to achieve this absorbance.

10.6.4 Record an absorbance spectrum and measure the FWHH of the chosen water peak. The measured FWHH of the water peak must be within 5% of the nominal instrument resolution to proceed with testing.

11.0 Method Procedures

11.1 Leak Check. Verify that there are no significant vacuum-side leaks using one of the leak tests described in this section. Perform the vacuum-side leak check after each installation at the sampling or measurement location. Leak check must be performed prior to the start of the field test, and after any relocation or maintenance to the sample transport system. A leak may be detected either by measuring a small amount of flow when there should be zero flow, or by measuring the vacuum decay rate. To test for leaks using loss of vacuum you must know the vacuum-side volume of your sampling system to within ±10% of its true volume.

11.1.1 Low-Flow Leak Test. Test a sampling system for leaks using low-flow measurements as follows:

11.1.1.1 Seal the probe end of the system by capping or plugging the end of the sample probe.

11.1.1.2 Start sampling pumps and operate them until the pressure stabilizes.

11.1.1.3 Observe/measure the flow through the vacuum-side of the sampling system. A flow of less than 0.5% of the system's normal in-use flow rate is acceptable.

Note: For bypass systems, where the sample flow rate through the vacuum side of the sample system is greater than the FTIR cell flow rate, the higher flow rate (bypass plus analyzer/FTIR flow rate) is used as the in-use flow rate when calculating acceptability of the leak level.

11.1.2 Vacuum-Decay Leak Test. Perform a vacuum-decay leak test as follows:

11.1.2.1 Seal the probe end of the system as close to the probe opening as possible by capping or plugging the end of the sample probe.

11.1.2.2 Operate all vacuum pumps. Draw a vacuum on the sampling system and let the pressure on the system stabilize.

11.1.2.3 Turn off the sample pumps and seal the system under a vacuum of 250 mmHg greater than the source static pressure. Record the absolute pressure and the system absolute temperature every 30 seconds for 5 minutes. The leak rate must be equal to or less than 2.5 mmHg per minute.

11.2 Detector Linearity. Observe the single beam instrument response in the frequency region below the detector cutoff (usually <400 cm^{-1}), where the detector response is known to be zero. Verify that the detector response is ''flat'' and equal to zero in this region, or at least 100 times less than the peak signal in the entire spectrum. If the response is not linear, decrease the aperture or attenuate the IR beam, and repeat the linearity check until the detector response is linear.

11.3 Gas Cell Pathlength. Verify the gas cell pathlength of your instrument by following the procedure found in section 10.6.4 of this method.

11.4 QA Spike. This procedure assumes that the method has been validated for each of the target analytes at the source. Choose one of two options and perform the standard addition procedure listed in ection 9.3 of this method.

Note: For unstable sources, QA spiking may be difficult. An alternative procedure for such a source is described in section 9.3.5.4.

11.4.1 QA Spike Option 1. Use a certified standard (±2% accuracy) for an analyte that has been validated at the source. One may either spike each analyte of interest or choose an appropriate surrogate. An appropriate surrogate must have a vapor pressure that is less than or equal to the analyte of interest and be less soluble in water. The wavelength at which the surrogate is to be quantified must be reported and be within 100 wavenumbers of a wavenumber that will be used to quantify the analyte of interest. Additionally, the pKa of a surrogate must be within 20% of the pKa of the analyte of interest. Surrogates are not allowed for the following analytes: formaldehyde, HCl, HF, NH_3, and vinyl chloride. If the spike recovery, as calculated by Equation 5 of this method, is within 70–130% then proceed with the testing.

11.4.2 QA Spike Option 2. Use a non-certified cylinder for an analyte that has been validated at the source. As with Option 1, one may either spike each analyte of interest or choose an appropriate surrogate. If the spike recovery, as calculated by equation 5 of this method, is within 90–110%, then proceed with the testing.

11.5 Sampling. Sampling must be done using a continuous flow of source gas.

11.5.1 Stratification Check. A stratification check must be performed, per the steps in this section, to justify sampling at a single location during testing.

11.5.1.1 Use a probe of appropriate length to measure the analyte of interest at each of 12 traverse points (MN_i, where i = 1 to 12) located according to section 11.3 of Method 1 in appendix A–1 to 40 CFR part 60 for a circular stack or nine points at the centroids of similarly shaped, equal area divisions of the cross section of a rectangular stack.

11.5.1.2 Calculate the mean measured concentration for all sampling points (MN_{avg}).

11.5.1.3 Calculate the percent stratification (S_t) of each traverse point using the following equation:

$$S_{ti} = \frac{MN_i - MN_{avg}}{MN_{avg}} * 100 \qquad \text{Equation 11}$$

11.5.1.4 The gas stream is considered to be unstratified and you may perform testing at a single point that most closely matches the mean if the concentration at each traverse point differs from the mean concentration for all traverse points by no more than 5.0% of the mean concentration.

11.5.1.5 If the criteria for single point sampling is not met, but the concentration at each traverse point differs from the mean concentration by no more than 10% of the mean, the gas stream is considered minimally stratified, and you may sample using the ''3-point short line.''

11.5.1.6 If the concentration at any traverse point differs from the mean by more than 10%, the gas stream is considered stratified, and you must sample using the stratification check procedure specified in section 11.5.1.1 of this method.

11.5.2 Assign a unique filename to each spectrum and separately to each corresponding interferogram. Spectra and interferograms must be providable in ''.spc'' format upon request.

11.5.3 Temperature. The temperature of the gas cell must be measured directly. The temperature measurement device must be calibrated to within ±0.1 °C every 12 months.

11.5.4 Pressure. The gas cell pressure must be measured empirically. The measurement device must be calibrated to within ±1 mmHg every 12 months.

11.5.5 Inspect the sample spectra immediately after the run to verify that the gas matrix composition was close to the expected (assumed) gas matrix. Additionally, look at the residual spectra for each sample spectrum to confirm interferences have been accounted for.

11.6 Post-Test CTS. At the end of each test, record another CTS spectrum. Compare the pre- and post-test CTS spectra. The peak absorbance in pre- and post-test CTS must be ±5% of the mean value.

11.7 Record and Report.

11.7.1 The following must be documented and reported for each sample spectrum: sampling conditions, sampling time (# of scans per average and amount of time per scan), instrumental conditions (pathlength, temperature, pressure, resolution, laser frequency, instrument make and model), and spectral filename.

11.7.2 Test Report. You must prepare a test report following the guidance in EPA Guidance Document 043 (Preparation and Review of Test Reports. December 1998). Additional minimum reporting requirements are listed here:

11.7.2.1 Instrument and sampling system related items.

a. Instrument make and model.

b. Sampling line length, material, and temperature.

c. Instrument resolution.

d. Cell pathlength, pressure, and temperature.

e. Laser frequency.

f. Cylinder regulator type.

11.7.2.2 Software/Algorithm related items.

a. Gases included in the analysis (interferences + analytes of interest).

b. Concentration values of reference spectra, as well as temperature and pressure. information for all interferences and analytes of interest.

c. Analysis wavelength regions for each compound (interferences + analytes of interest).

11.7.2.3 CTS, QA/QC and validation related items.

a. A list of compounds that are being spiked. Note that Method 320 allows for use of qualified surrogates. Qualified surrogates should be appropriate for the compound actually being measured. It is preferable that the compound of interest always be spiked if it is available as a certified standard.

b. Is/are the spike(s) being performed dynamically?

c. Are spikes being introduced at the back of the sample probe and travelling through the entire sampling system?

d. Are standards being used for QA spiking of appropriate quality? For example, (±2% for Protocol gases where available and ±5% for other certified gases?

e. Has FTIR been validated for the source under consideration?

11.8 Digital Data Storage. All field test data must be electronically stored, readily available, and provided to the regulatory authority upon request. Stored information must include: sample interferograms, background interferograms, CTS sample interferograms, processed sample absorbance spectra, and processed CTS absorbance spectra.

12.0 Data Analysis and Calculations

12.1 Analyte concentrations must be measured using reference spectra as they are described in section 10.5 of this method. Use the algorithm developed in section 8.3 of this method to calculate the concentration of each species in the sample matrix as well as their respective residuals. Classical least squares, augmented classical least squares, or partial least squares algorithms must meet the following criteria:

12.1.1 The algorithm must be capable of correcting for differences in gas cell pathlength, temperature, and cell pressure between sample and reference spectra. If the algorithm does not have this capability, perform this correction using equation 12:

$$C_{corr} = \left(\frac{L_r}{L_s}\right)\left(\frac{T_s}{T_r}\right)\left(\frac{P_r}{P_s}\right)C_{calc} \qquad \text{Equation 12}$$

12.1.2 The algorithm must be capable of reporting spectral residuals for all compounds being analyzed as a function of its spectral fit using the techniques in section 11.1 of this method.

13.0 Method Performance

13.1 Detection Level (DL). The DL of this method is defined as the SAR value where the SAR is greater than three times the residual value of the corresponding standard addition elevated concentration (MC_{spiked}). The DL for this method must be less than or equal to 20% of the applicable compliance limit for the compound being measured. If this is not the case, Method 320 cannot be used for such an application.

13.2 Background Deviation. Deviations in absorption greater than ±5% in an analytical region are unacceptable, and Method 320 cannot be used under this condition.

14.0 Pollution Prevention

The extracted sample gas is vented outside the enclosure containing the FTIR system and gas manifold after the analysis. In typical method applications, the vented sample volume is a small fraction of the source volumetric flow and its composition is identical to that emitted from the source. When analyte spiking is used, spiked pollutants are vented with the extracted sample gas. Minimize emissions by keeping the spike flow off when not in use.

15.0 Waste Management

Small volumes of laboratory gas standards can be vented through a laboratory hood. Neat samples must be packed and disposed of according to applicable regulations. Surplus materials may be returned to supplier for disposal.

16.0 References

1. Protocol for the Use of Extractive Fourier Transform Infrared (FTIR) Spectrometry in Analyses of Gaseous Emissions from Stationary Sources, *https://www3.epa.gov/ttn/emc/ftir/FTIRProtocol.pdf.*
2. U.S. EPA. Method 301—Field Validation of Pollutant Measurement Methods from Various Waste Media, 40 CFR part 63, appendix A.
3. EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards, *https://www.epa.gov/air-research/epa-traceability-protocol-assay-and-certification-gaseous-calibration-standards.*

17.0 Tables, Diagrams, Flowcharts, and Validation Data

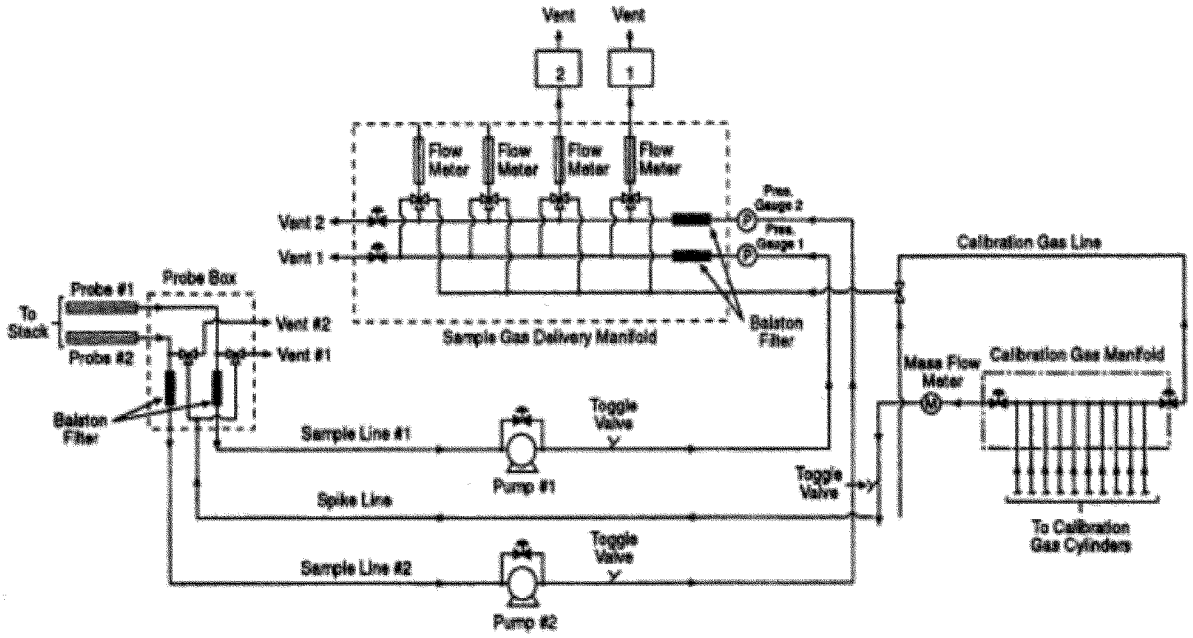

Figure 1. Schematic of FTIR Sampling System

* * * * *

[FR Doc. 2024–04359 Filed 2–29–24; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 89, No. 42
Friday, March 1, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Collaborating, Learning, and Adapting Case Competition Submission Forms

AGENCY: Agency for International Development (USAID).

ACTION: Notice of information collection; request for comment.

SUMMARY: The Office of Learning, Evaluation, and Research holds an annual Collaborating, Learning, and Adapting (CLA) Case Competition, wherein USAID partners and staff can submit examples of the way in which they have employed CLA approaches in their work. The submissions are posted online (available to the public), contributing to agency learning through these real-world experiences. As required by the Paperwork Reduction Act of 1995, as amended, USAID is soliciting comments for this collection.

DATES: Comments are due April 1, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Amy Koler, *amkoler@usaid.gov,* 202–257–0487

SUPPLEMENTARY INFORMATION: USAID, 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 the proposed information collection. This proposed information collection was previously published in the **Federal Register** (88 FR 89654) on December 28, 2023. This notice allows for an additional 30 days for public comments.

Title of Collection: Collaborating, Learning, and Adapting Case Competition.

OMB Control Number: XXXXXX.

Type of Review: A new information collection.

Respondents/Affected Public: USAID's partners and USAID staff.

Total Estimated Number of Annual Responses: 85.

Total Estimated Number of Annual Burden Hours: 864.

Abstract: When a partner or USAID staff member decides to participate in the annual Collaborating, Learning, and Adapting (CLA) Case Competition, they must download the CLA Case Competition Submission Form from USAID's Learning Lab website. Through answering the six question form, they detail the context in which they were working, the specific manner in which they applied a CLA approach (or approaches) and describe the result of using that approach. The answers to these questions, plus a summary and a photo, constitute their submission to the competition. When they submit their case competition submission, they must also submit the CLA Case Competition Web Submission Form. This form captures additional information about the case, the organization submitting the form, and their experience with the case competition, as well as point of contact information. The CLA Case Competition Submission Form is shared with the public through USAID's Learning Lab website. The information from the CLA Case Competition Web Submission form is kept in a restricted online file.

USAID and the Office of Management and Budget are particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. 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;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Tania Alfonso,

PLR/LER, Program Cycle Supervisory Team Lead, USAID.

[FR Doc. 2024–04347 Filed 2–29–24; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 1, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service (NASS)

Title: Fast Track Generic Clearance for Qualitative Feedback on Customer Satisfaction Surveys.

OMB Control Number: 0535–0261.

Summary of Collection: Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to ensure that our programs are effective and meet our users' needs, the National Agricultural Statistics Service (NASS) seeks to obtain OMB approval for the renewal of this generic clearance to collect qualitative feedback on our products and services. The qualitative information to be collected is intended to provide useful insights on user perceptions and opinions. It is not intended to yield quantitative results that are statistically generalizable to any larger populations.

Annual requests from the Illinois Department of Agriculture (IDOA) to establish numerical measurements of the general level of satisfaction felt by IDOA's customers and clients will be included in this generic information collection request when funded by the IDOA. The results are used by some Bureaus in the IDOA as part of a Public Accountability Report that is submitted to the Illinois Comptroller. In addition, the Bureaus are using the results to help guide their operational management decisions, in particular for training staff.

Need and Use of the Information: This collection of information is necessary to enable NASS to obtain feedback in an efficient, timely manner, in accordance with our commitment to improving the quality, usability, and ease of accessing our surveys and public information. This feedback will provide insights into user perceptions, experiences, expectations, and provide an early warning of issues with service; and focus attention on areas where communication, training, or changes in operations might improve delivery of products and services. These collections will allow for ongoing, collaborative, and actionable communications between NASS and its customers and stakeholders. The feedback will also contribute directly to the improvement of program management.

Description of Respondents: Farmers, ranchers, agri-businesses and data users.

Number of Respondents: 120,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 8,375.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–04286 Filed 2–29–24; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA–2023–0025]

Continuation of Farm Service Agency's Conservation Reserve Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; extension of authorization.

SUMMARY: The Further Continuing Appropriations and Other Extensions Act, 2024, extended the authorization of the Agricultural Improvement Act of 2018 (2018 Farm Bill), through September 30, 2024, for the Conservation Reserve Program (CRP), a Commodity Credit Corporation (CCC) program administered by the Farm Service Agency (FSA). This notice provides information about CRP, which has been extended until September 30, 2024. CRP will be administered by and through its current terms and procedures.

FOR FURTHER INFORMATION CONTACT: Beverly Preston; telephone: (202) 720–9563; email: *Beverly.Preston@usda.gov.* Individuals who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

CRP

The Further Continuing Appropriations and Other Extensions Act, 2024 (Pub. L. 118–22) maintains the CRP enrollment cap at the 27-million-acre level for FY 2024, unchanged from the 2018 Farm Bill. Current CRP enrollment is 24.8 million acres. CRP's purpose continues to be to cost-effectively assist producers in conserving and improving natural resources, restoring environmentally sensitive land by converting it to long-term vegetative cover, and improving the health of grasslands. Producers may enroll in CRP's annual general and grassland signups. They may also enroll environmentally sensitive land through CRP's continuous signups. A continuous signup includes lands enrolled through the Conservation Reserve Enhancement Program (CREP), which allows States, Tribal governments, and nongovernmental organizations (NGO) to partner with FSA to implement CRP practices that address high priority conservation and environmental objectives at specific locations. The dates producers may begin offering new CRP contracts will be announced through the normal news release process.

Transition Incentives Program

The Transition Incentives Program (TIP) was extended through September 30, 2024, with no changes. The Inflation Reduction Act of 2022 (Pub. L. 117–169) made additional funds available until September 30, 2031, unless any future amendatory legislation specifies another date. TIP incentivizes the voluntary transition of land enrolled in an expiring CRP contract from its current landowner or operator to a veteran, beginning, or socially disadvantaged (SDA) farmer or rancher to return the land to production for sustainable grazing or crop production in a way that preserves established conservation practices.

Eligible landowners and operators, veteran, beginning, or SDA farmers and ranchers may enroll in TIP on a continuous basis beginning 2 years before the CRP contract expires. Landowners or operators who qualify for TIP may be eligible to receive additional annual rental payments for up to 2 additional years after the CRP contract expires.

Forest Management Incentive

The Forest Management Incentive (FMI) was extended through September 30, 2024, with no change. The Inflation Reduction Act of 2022 (Pub. L. 117–169) made additional funds available until September 30, 2031, unless any future amendatory legislation specifies another date. FMI is available to farmers, ranchers, and forest landowners currently participating in CRP to encourage management activities such as thinning and pruning of trees, which are used to provide conservation covers.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation,

disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

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

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

Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2024–04288 Filed 2–29–24; 8:45 am]

BILLING CODE 3411–E2–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Nevada Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via ZoomGov at 1:00 p.m. Pacific on Friday, March 29, 2024. The purpose of the meeting will be to discuss a potential post-report activity and wrap up project on Teacher Shortages and Equity in Education.

DATES: Friday, March 29, 2024, from 1:00 p.m.–2:00 p.m. PT.

Webinar Link to Join (Audio/Visual): https://www.zoomgov.com/webinar/register/WN-OiZq-2wQT6KbIExJafjf3g

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 161 420 7379

FOR FURTHER INFORMATION CONTACT: Ana Fortes, Designated Federal Officer, at *afortes@usccr.gov* or (202) 519–2938.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Angelica Trevino, Support Specialist, at *atrevino@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Ana Fortes (DFO) at *afortes@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nevada Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *atrevino@usccr.gov.*

Agenda

I. Welcome, Roll Call, and Announcements
II. Discuss Potential Post-Report Activity (and Vote)
III. USCCR Application for 2024–2028 NV SAC Term
IV. Public Comment
V. Adjournment

Dated: February 26, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–04313 Filed 2–29–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of Virtual Business Meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the New York Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is to vote on the recommendations section, the background section, and the entire draft report on the New York child welfare system and its impact on Black children and families.

DATES: Friday, March 15, 2024, from 1 p.m.–3 p.m. Eastern Time

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://bit.ly/49KJN95

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Webinar ID: 160 016 1899#

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 1–202–809–9618.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested member of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular

charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, New York Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Vote: Recommendations Section
IV. Vote: Background Section
V. Vote: Report
VI. Public Comment
VII. Next Steps
VIII. Adjournment

Dated: February 26, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–04312 Filed 2–29–24; 8:45 am]

BILLING CODE 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; Current Population Survey (CPS) Basic Demographic Items

AGENCY: Census Bureau, Department of 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 reinstatement without change of the Current Population Survey Basic Demographics as required by the Paperwork Reduction Act of 1995, 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 April 30, 2024.

ADDRESSES: Interested persons are invited to submit written comments by email to Kyra Linse, Survey Director, Current Population Surveys via the internet at *dsd.cps@census.gov,* or by calling 301–763–9280. Please reference Current Population Survey (CPS) Basic Demographic Items in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2024–0003, 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 Kyra Linse, Survey Director, Current Population Surveys by phone at (301) 763–9280 or via email at *dsd.cps@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of basic demographic information on the Current Population Survey (CPS) beginning in September 2024. The current clearance expires August 31, 2024.

The CPS has been the source of official government statistics on employment and unemployment since 1942. The Bureau of Labor Statistics (BLS) and the Census Bureau jointly sponsor the basic monthly survey. The Census Bureau also prepares and conducts all the field work. At the OMB's request, the Census Bureau and the BLS divide the clearance request in order to reflect the joint sponsorship and funding of the CPS program. BLS submits a separate clearance request for the portion of the CPS that collects labor force information for the civilian noninstitutional population. Some of the information within that portion includes employment status, number of hours worked, job search activities, earnings, duration of unemployment, and the industry and occupation classification of the job held the previous week. The justification that follows is in support of the demographic data.

The demographic information collected in the CPS provides a unique set of data on selected characteristics for the civilian noninstitutional population. Some of the demographic information we collect are age, marital status, sex, Armed Forces status, education, race, origin, and family income. We use these data in conjunction with other data, particularly the monthly labor force data, as well as periodic supplement data. We also use these data independently for internal analytic research and for evaluation of other surveys. In addition, we use these data as a control to produce accurate estimates of other personal characteristics.

II. Method of Collection

The CPS basic demographic information is collected from individual households by both personal visit and telephone interviews each month. All interviews are conducted using computer-assisted interviewing. Households in the CPS are in sample for four consecutive months, and for the same four months the following year. This is called a 4–8–4 rotation pattern; households are in sample for four months, in a resting period for eight months, and then in sample again for four months.

III. Data

OMB Control Number: 0607–0049.

Form Number(s): There are no forms. All interviews are conducted on computers.

Type of Review: Regular submission, Request for Reinstatement, without Change of a Previously Approved Collection for which approval has expired.

Affected Public: Households.

Estimated Number of Respondents: 59,000 per month.

Estimated Time per Response: 1.5 minutes.

Estimated Total Annual Burden Hours: 17,700.

Estimated Total Annual Cost to Public: There is no cost to the respondents other than their time (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. 8(b), 141, 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 Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–04381 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority; Public Combined Board and Board Committees Meeting

AGENCY: First Responder Network Authority (FirstNet Authority), National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

ACTION: Announcement of meeting.

SUMMARY: The FirstNet Authority Board will convene an open public meeting of the Board and Board Committees.

DATES: March 6, 2024; 9 a.m. to 11 a.m. Hawaii standard time (HST); Honolulu, Hawaii.

ADDRESSES: The meeting will be held at the Hilton Hawaiian Village, 2005 Kalia Road, Honolulu, Hawaii 96815. Members of the public are not able to attend in-person but may listen to the meeting and view the presentation by visiting the URL: *https://firstnet.webex.com/firstnet/j.php?MTID=m1f6cc8d6567b7e002d99504a8cf0c759.*

Meeting Number: 2821 181 0782.

Password: JvAH7F2SSJ5.

Call In (Audio Only): +1–415–527–5035.

Access Code: 2821 181 0782.

If you experience technical difficulty, contact the FirstNet Authority Customer Support Service Desk at *CCSD@FirstNet.gov.* Webex information can also be found on the FirstNet Authority website (*https://FirstNet.gov*).

FOR FURTHER INFORMATION CONTACT:

General information: Jennifer Watts, (571) 665–6178, *Jennifer.Watts@FirstNet.gov.*

Media inquiries: Ryan Oremland, (571) 665–6186, *Ryan.Oremland@FirstNet.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Middle-Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1401 *et seq.*) (Act) established the FirstNet Authority as an independent authority within NTIA. The Act directs the FirstNet Authority to ensure the building, deployment, and operation of a nationwide interoperable public safety broadband network. The FirstNet Authority Board is responsible for making strategic decisions regarding the operations of the FirstNet Authority.

Matters to be Considered: The FirstNet Authority will post a detailed agenda for the Combined Board and Board Committees Meeting on FirstNet.gov prior to the meeting. The agenda topics are subject to change. Please note that the subjects discussed by the Board and Board Committees may involve commercial or financial information that is privileged or confidential, or other legal matters affecting the FirstNet Authority. As such, the Board may, by majority vote, close the meeting only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

Other Information: The public Combined Board and Board Committees Meeting is accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Jennifer Watts at (571) 665–6178 or email: *Jennifer.Watts@FirstNet.gov* before the meeting.

Records: The FirstNet Authority maintains records of all Board proceedings. Minutes of the Combined Board and Board Committees Meeting will be available on *https://FirstNet.gov.*

Dated: February 27, 2024.

Jennifer Watts,

Board Secretary, First Responder Network Authority.

[FR Doc. 2024–04389 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–TL–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Investment Advisory Council

AGENCY: SelectUSA, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), this notice announces, the United States Investment Advisory Council (IAC) will hold a public meeting on March 25th, 2024. In August 2022, U.S. Secretary of Commerce Gina M. Raimondo appointed a new cohort of members to serve two-year terms. Members of this cohort will meet for the final time to discuss programs and policies to promote and retain foreign

direct investment (FDI) across the country.

DATES: Monday, March 25th, 2024, 10 a.m.–11:30 a.m. ET.

ADDRESSES: The meeting will be held in-person and virtually. Please note that registration is required both to attend the meeting and to make a statement during the public comment portion of the meeting. Please limit comments to five minutes or less and submit a brief statement summarizing your comments to: *IAC@trade.gov* or United States Investment Advisory Council, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 30011, Washington, DC 20230. The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting is 5 p.m. ET on March 18, 2024. Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Claire Pillsbury, United States Investment Advisory Council, 1401 Constitution Avenue NW, Washington, DC 20230, phone: 202–578–8239, email: *IAC@trade.gov.*

SUPPLEMENTARY INFORMATION: The IAC was established under the discretionary authority of the Secretary of Commerce (Secretary) and in accordance with the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*).

The IAC advises the Secretary on matters relating to the promotion and retention of foreign direct investment in the United States. At the meeting, the IAC members will discuss work done within the three subcommittees: Economic Competitiveness, Workforce, and SelectUSA 2.0. The final agenda will be posted on the Department of Commerce website for the IAC at: *https://www.trade.gov/selectusa-investment-advisory-council,* prior to the meeting.

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **ADDRESSES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker and a brief statement summarizing the comments. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers.

Speakers are requested to submit a written copy of their prepared remarks by 5 p.m. ET on March 18, 2024, for inclusion in the meeting records and for circulation to the Members of the IAC.

In addition, any member of the public may submit pertinent written comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to Claire Pillsbury at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. ET on March 18, 2024, to ensure transmission to the IAC members prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered during the meeting. Comments and statements will be posted on the IAC website (*https://www.trade.gov/selectusa-investment-advisory-council*) without change, including any business or personal information provided such as it includes names, addresses, email addresses, or telephone numbers. All comments and statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

Copies of the meeting minutes will be available within 90 days of the meeting date.

Jasjit Kalra,

Executive Director, SelectUSA.

[FR Doc. 2024–04353 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–856–002]

Mattresses From Slovenia: Preliminary Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that mattresses from Slovenia are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2022, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Andrew Hart, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1058.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 23, 2023.[1] On October 23, 2023, Commerce postponed the preliminary determination of this investigation until February 23, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are mattresses from

[1] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 57433 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 88 FR 72737 (October 23, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from Slovenia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Slovenia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble,*[4] we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily relied upon the facts otherwise available with adverse inferences for Noctis D.O.O., Stokke AS, BBCC Int. D.O.O., and Mirisan D.O.O. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers and exporters. Commerce has preliminarily determined the estimated weighted-average dumping margin for each of the individually examined respondents under section 776 of the Act. Although pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances has been to calculate the all-others rate as a simple average of the alleged dumping margins from the petition,[8] the petition in this case included only one alleged dumping margin, revised for the initiation of this investigation (*i.e.,* 744.81).[9] Accordingly, we are using the dumping margin on which we initiated as the basis for the all-others rate.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Noctis D.O.O	*744.81
Stokke AS	*744.81
BBCC Int. D.O.O	*744.81
Mirisan D.O.O	*744.81
All Others	744.81

*Adverse Facts Available (AFA).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to each of the individually examined companies in this investigation, in accordance with section 776 of the Act, and the AFA information is sourced solely from information submitted by the petitioners, there are no calculations to disclose.

Verification

Because the individually examined respondents in this investigation did not provide the information requested by Commerce, and Commerce preliminarily determines each of the examined respondents to have been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 57434.

[6] *See* Memorandum, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

[7] *Id.*

[8] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014).

[9] *See Initiation Notice,* 88 FR at 57436.

preliminary determination.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[11] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[12]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[13] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the time and date for the hearing. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

[10] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(i) to alter the time limit for the filing of case briefs.

[11] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[14] *See APO and Service Final Rule.*

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: February 23, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa,

and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–04329 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–882]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Hyundai Steel Co., Ltd. (Hyundai Steel) and POSCO/POSCO International Corporation (collectively POSCO), producers/exporters of certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea), received countervailable subsidies during the period of review (POR) January 1, 2021, through December 31, 2021.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sam Evans or Benito Ballesteros, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2420 and (202) 705–7455, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 2023, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** and invited interested parties to comment.[1] On January 12, 2024, Commerce extended the deadline for issuing the final results until February 23, 2024.[2]

For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Scope of the Order [4]

The merchandise covered by this *Order* is cold-rolled steel.[5]

Analysis of Comments Received

All issues raised in interested parties' case briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Rescission of Administrative Review, In Part

As noted in the *Preliminary Results,*[6] based on our analysis of U.S. Customs and Border Protection (CBP) data, we determine that two companies, Hyundai Group and POSCO C&C Co., Ltd. had no reviewable shipments, sales, or entries of subject merchandise during the POR. We received no comments or additional information from any interested parties regarding these two companies. Therefore, absent evidence of shipments on the record, we are rescinding the administrative review of these companies, pursuant to 19 CFR 351.213(d)(3).

Changes Since the Preliminary Results

Based comments received from interested parties, we made certain changes to Hyundai Steel's and POSCO's countervailable subsidy rate calculations from the *Preliminary Results.*[7]

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[8] For a full description of the methodologies underlying all of Commerce's conclusions, *see* the Issues and Decision Memorandum.

Final Results of Administrative Review

We determine that, for the period January 1, 2021, through December 31, 2021, the following total net countervailable subsidy rates exist:

[1] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, Partial Rescission, and Preliminary Intent to Rescind, in Part: 2021,* 88 FR 69136 (October 5, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Extension of Deadline for Final Results of 2021 Countervailing Duty Administrative Review,'' dated January 12, 2024.

[3] *See* Memorandum, ''Decision Memorandum for the Final Results and Partial Rescission of the Countervailing Duty Administrative Review; 2021: Certain Cold-Rolled Steel Flat Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Certain Cold-Rolled Steel Flat Products from Brazil, India, and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (the Republic of Korea) and Countervailing Duty Orders (Brazil and India),* 81 FR 64436 (September 20, 2016) (*Order*).

[5] For a complete description of the scope of the *Order, see Preliminary Results* PDM.

[6] *Id.,* 88 FR at 88137.

[7] For a full description of these revisions, *see* the Issues and Decision Memorandum.

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Producer/exporter	Subsidy rate (percent *ad valorem*)
Hyundai Steel Company[9]	0.76
POSCO/POSCO International Corporation[10]	0.86

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and CBP shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. 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 Rates

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for the companies listed above on shipments of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the all-others rate or most recent company-specific rate applicable to the company, as appropriate. These cash deposits, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final 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/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: February 23, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–04294 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for April 2024

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in April 2024 and will appear in that months' *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Cast Iron Soil Pipe from China, A–570–079 (1st Review)	Thomas Martin, (202) 482–3936.
Large Residential Washers from Mexico, A–201–842 (2nd Review)	Mary Kolberg, (202) 482–1785.

[9] As discussed in the *Preliminary Results* PDM, Commerce has found the following company to be cross-owned with Hyundai Steel Company: Hyundai ITC and Hyundai Green Power Co. Ltd. Hyundai Steel Company is also known as Hyundai Steel Co., Ltd.

[10] As discussed in the *Preliminary Results* PDM, Commerce has found the following companies to be cross-owned with POSCO: Pohang Scrap Recycling Distribution Center Co. Ltd.; POSCO Chemical; POSCO M-Tech; POSCO Nippon Steel RHF Joint Venture Co., Ltd.; POSCO Terminal, and POSCO Steel Processing and Service. In the *Preliminary Results,* POSCO Steel Processing and Service was omitted from the list of companies that are cross-owned with POSCO.

	Department contact
Steel Wheels from China, A–570–082 (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
Utility Scale Wind Towers from China, A–570–981 (2nd Review)	Thomas Martin, (202) 482–3936.
Utility Scale Wind Towers from Vietnam, A–552–863 (2nd Review)	Thomas Martin, (202) 482–3936.
Countervailing Duty Proceedings	
Cast Iron Soil Pipe from China, C–570–080 (1st Review)	Thomas Martin, (202) 482–3936.
Steel Wheels from China, C–570–083 (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
Utility Scale Wind Towers from China, C–570–982 (2nd Review)	Mary Kolberg, (202) 482–1785.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in April 2024.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year* (*Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[1]

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 14, 2024

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–04370 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–826]

Mattresses From Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that mattresses from Spain are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2022, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or Matthew Palmer, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1168 or (202) 482–1678, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 23, 2023.[1] On October 23, 2023, Commerce postponed the preliminary determination of this investigation until February 23, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are mattresses from Spain. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble,*[4] we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6]

[1] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 57433 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 72737 (October 23, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from Spain,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 57434.

[6] *See* Memorandum, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Scope Comments Decision Memorandum for the Preliminary

Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export price and constructed export price in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily relied upon facts otherwise available, with adverse inferences (AFA) for Interplasp Fabrica de Espuma de Poliuretano (Interplasp). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(ii) of the Act provides that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Interplasp. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Healthcare Foam, S.L. Unipersonal (HC Foam).[8] Consequently, the rate calculated for HC Foam is also assigned as the rate for all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Weighted-average dumping margin (percent)
Healthcare Foam, S.L. Unipersonal/Comotex Sistemas Del Descanso, S.L. Unipersonal	10.74
Interplasp Fabrica de Espuma de Poliuretano	* 280.28
All Others	10.74

* AFA.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation measures will remain in effect until further notice.

Disclosure

Commerce intends to disclose the calculations performed in connection with this preliminary determination to interested parties within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation.[9] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[10] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[11]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[12] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the

Determination,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

[7] *Id.*

[8] Commerce preliminarily determines that Healthcare Foam, S.L. Unipersonal and its affiliate Comotex Sistemas Del Descanso, S.L. Unipersonal are a single entity (HC Foam). For further discussion, *see* Preliminary Decision Memorandum; *see also* Memorandum, ''Antidumping Investigation on Mattresses from Spain: Preliminary Affiliation and Collapsing Memorandum,'' dated concurrently with this notice.

[9] *See* 19 CFR 351.309(c)(1)(i); *see also* 19 CFR 351.303 (for general filing requirements).

[10] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[11] *See* 19 351.309(c)(2) and (d)(2).

[12] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[13] *See APO and Service Final Rule.*

number of participants, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the time and date for the hearing.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On February 21, 2024, pursuant to 19 CFR 351.210(e), HC Foam requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[14] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of mattresses from Spain are materially injuring, or threaten material injury to, the U.S. industry.

[14] *See* HC Foam's Letter, ''Request to Extend Final Determination,'' dated February 21, 2024.

Notification to Interested Parties

This preliminary determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: February 23, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience

and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–04320 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–873]

Mattresses From Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that mattresses from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2022, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Ajay Menon, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0208.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 23, 2023.[1] On October 23, 2023, Commerce postponed the preliminary determination of this investigation until February 23, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are mattresses from Taiwan. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble,*[4] we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted on the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily relied upon the facts otherwise available with adverse inferences for Fuyue Mattress Industry Co., Ltd. (Fuyue Mattress), Star Seeds Co., Ltd. (Star Seeds), and Yong Yi Cheng Co., Ltd. (Yong Yi Cheng). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

On January 24, 2024, the petitioners[8] timely filed a critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise from Taiwan.[9]

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. We preliminarily determine that critical circumstances exist with respect to imports of mattresses from Taiwan. For a full description of the methodology underlying the preliminary critical

[1] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,*88 FR 57433 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair Value Investigations,* 88 FR 72737 (October 23, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from Taiwan,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 57434.

[6] *See* Memorandum, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

[7] *Id.*

[8] The petitioners are: Brooklyn Bedding LLC; Carpenter Co.; Corsicana Mattress Company; Future Foam, Inc.; FXI, Inc.; Kolcraft Enterprises, Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding, LLC; Southerland, Inc.; Tempur Sealy International; the International Brotherhood of Teamsters; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO.

[9] *See* Petitioners' Letter, ''Mattress Petitioners' Allegation of Critical Circumstances,'' dated January 24, 2024.

circumstances determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters. Commerce has preliminarily determined the estimated weighted-average dumping margin for each of the individually examined respondents under section 776 of the Act. Although, pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances has been to calculate the all-others rate as a simple average of the alleged dumping margins from the petition,[10] the petitioners calculated only one estimated dumping margin in the petition (*i.e.,* 624.50 percent).[11] Therefore, consistent with Commerce's practice, we have preliminary assigned the dumping margin of 624.50 percent as the all-others rate in this investigation.[12]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer/exporter	Weighted-average dumping margin (percent)
Fuyue Mattress Industry Co., Ltd	*624.50
Yong Yi Cheng Co., Ltd	*624.50
Star Seeds Co., Ltd	*624.50
All Others	624.50

*Adverse Facts Available (AFA).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Section 733(e)(2) of the Act provides that, given a preliminary affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced or exported by the mandatory respondents and all other producers and/or exporters of mattresses from Taiwan.[13] In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of subject merchandise from all producers and exporters of mattresses from Taiwan that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice in the **Federal Register**. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to the individually examined companies in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the petition, there are no calculations to disclose.

Verification

Because the individually examined respondents in this investigation did not provide information requested by Commerce, and Commerce preliminarily determines each of the examined respondents to have been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination.[14] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[15] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[16]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior

[10] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014).

[11] *See Initiation Notice,* 87 FR at 57436.

[12] We note that, as discussed in the Preliminary Decision Memorandum, Commerce was unable to confirm with Federal Express that Dragon Wankeng Industry Co., Ltd. (Dragon Wankeng) received the questionnaire that Commerce issued to it because the address was ''unusable or incorrect.'' Therefore, we are preliminarily applying the all-others rate discussed above to Dragon Wankeng.

[13] *See* Preliminary Decision Memorandum.

[14] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(i) to alter the time limit for the filing of case briefs.

[15] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Final Service Rule*).

[16] *See* 19 351.309(c)(2) and (d)(2).

proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[17] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[18]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the time and date for the hearing. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: February 23, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized

[17] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[18] *See APO and Final Service Rule.*

Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–04319 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–803–001]

Mattresses From Kosovo: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that mattresses from Kosovo are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2022, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Carey, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3964.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 23. 2023.[1] On October 23, 2023, Commerce postponed the preliminary determination for this investigation until February 23, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are mattresses from Kosovo. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble,*[4] we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6]

Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices for Ventius International LLC (Ventius) in accordance with section 772(a) of the Act. Normal value for Ventius is calculated in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied on facts otherwise available, with adverse inferences (AFA), for Nisco Thailand Co., Ltd. (Nisco Thailand). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Ventius. As a result, because we have only calculated one margin and that margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Ventius is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

[1] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 57433 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair Value Investigations,* 88 FR 72737 (October 23, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from Kosovo,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 57434.

[6] *See* Memorandum, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

[7] *Id.*

Producer/exporter	Weighted-average dumping margin (percent)
Ventius International LLC	62.51
Nisco Thailand Co., Ltd	*344.70
All Others	62.51

*Rate based on AFA.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rates for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation measures will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation.[8] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[9] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[10]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[11] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On January 28, 2024, Ventius requested that Commerce postpone the final determination in the event of an affirmative preliminary determination and that provisional measures be extended to a period not to exceed six months.[13] On February 6, 2024, the petitioners [14] requested that Commerce postpone the final determination in the event of a negative preliminary determination.[15] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

[8] *See* 19 CFR 351.309(c)(1)(i); *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[12] *See APO and Service Final Rule.*

[13] *See* Ventius' Letter, ''Mattresses from Kosovo: Request to Extend Final Determination,'' dated January 8, 2024.

[14] Brooklyn Bedding; Carpenter Co.; Corsicana Mattress Company; Future Foam Inc.; FXI, Inc.; Kolcraft Enterprises Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding Inc.; Southerland, Inc.; Tempur Sealy International; the International Brotherhood of Teamsters; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioners).

[15] *See* Petitioners' Letter, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Mattress Petitioners' Request for Postponement of Antidumping Final Determinations,'' dated February 6, 2024.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of mattresses from Kosovo are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This preliminary determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: February 23, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–04324 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–157]

Aluminum Lithographic Printing Plates From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of aluminum lithographic printing plates (printing plates) from the People's Republic of China (China). The period of investigation (POI) is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova, AD/CVD Operations Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue

NW, Washington, DC 20230; telephone: (202) 482–1280.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty investigation on October 25, 2023.[1] On December 7, 2023, Commerce postponed the preliminary determination until February 26, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation are printing plates from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.*, scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.*

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents and the Government of China did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[7] For further information, *see* the ''Use of Facts Otherwise Available and Adverse Inferences'' section in the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final determination in this investigation with the final determination in the companion antidumping duty investigation of printing plates from China based on a request made by Eastman Kodak Company (the petitioner).[8] Consequently, the final countervailing duty determination will be issued on the same date as the final antidumping duty determination, which is currently scheduled to be issued no later than July 9, 2024, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Shanghai National Ink Co. Ltd. Therefore, the only rate that that is not zero, *de minimis*, or based entirely on facts otherwise available is the rate calculated for Fujifilm Printing Plate (China) Co., Ltd. (FFPS). Consequently, the rate calculated for FFPS is also assigned as the rate for all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent ad valorem)
Fujifilm Printing Plate (China) Co., Ltd.[9]	38.50
Shanghai National Ink Co. Ltd	231.98
All Others	38.50

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** . Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to

[1] *See Aluminum Lithographic Printing Plates from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 88 FR 73313 (October 25, 2023) (*Initiation Notice*).

[2] *See Aluminum Lithographic Printing Plates from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 88 FR 85219 (December 7, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Aluminum Lithographic Printing Plates from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice.*

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* sections 776(a) and (b) of the Act.

[8] *See* Petitioner's Letter, ''Petitioner's Request to Align Final Countervailing Duty Determination With the Companion Antidumping Duty Final Determinations,'' dated February 12, 2024.

[9] As discussed in the Preliminary Decision Memorandum, Commerce has found the following company to be cross-owned with FFPS: Fujifilm (China) Investment Co., Ltd.

issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[10] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[11]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[12] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce via ACCESS within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.[14]

[10] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[11] *See* 19 CFR 351.309(c)(2) and (d)(2).

[12] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[13] *See APO and Service Final Rule*, 88 FR at 67069.

[14] *See* 19 CFR 351.310(d).

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: February 26, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is aluminum lithographic printing plates. Aluminum lithographic printing plates consist of a flat substrate containing at least 90 percent aluminum. The aluminum-containing substrate is generally treated using a mechanical, electrochemical, or chemical graining process, which is followed by one or more anodizing treatments that form a hydrophilic layer on the aluminum-containing substrate. An image-recording, oleophilic layer that is sensitive to light, including but not limited to ultra-violet, visible, or infrared, is dispersed in a polymeric binder material that is applied on top of the hydrophilic layer, generally on one side of the aluminum lithographic printing plate. The oleophilic light-sensitive layer is capable of capturing an image that is transferred onto the plate by either light or heat. The image applied to an aluminum lithographic printing plate facilitates the production of newspapers, magazines, books, yearbooks, coupons, packaging, and other printed materials through an offset printing process, where an aluminum lithographic printing plate facilitates the transfer of an image onto the printed media. Aluminum lithographic printing plates within the scope of this investigation include all aluminum lithographic printing plates, irrespective of the dimensions or thickness of the underlying aluminum substrate, whether the plate requires processing after an image is applied to the plate, whether the plate is ready to be mounted to a press and used in printing operations immediately after an image is applied to the plate, or whether the plate has been exposed to light or heat to create an image on the plate or remains unexposed and is free of any image.

Subject merchandise also includes aluminum lithographic printing plates produced from an aluminum sheet coil that has been coated with a light-sensitive image-recording layer in a subject country and that is subsequently unwound and cut to the final dimensions to produce a finished plate in a third country (including the United States), or exposed to light or heat to create an image on the plate in a third country (including in a foreign trade zone within the United States).

Excluded from the scope of this investigation are lithographic printing plates manufactured using a substrate produced from a material other than aluminum, such as rubber or plastic.

Aluminum lithographic printing plates are currently classifiable under Harmonized Tariff of the United States (HTSUS) subheadings 3701.30.0000 and 3701.99.6060. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 3701.99.3000 and 8442.50.1000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–04392 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–487–001]

Mattresses From Bulgaria: Preliminary Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that mattresses from Bulgaria are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2022, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: T.J. Worthington, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401

Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4567.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 23, 2023.[1] On October 23, 2023, Commerce postponed the preliminary determination of this investigation until February 23, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are mattresses from Bulgaria. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble,*[4] we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon the facts otherwise available with adverse inferences for BRN Sleep Products and Fumeibai Industrial Co., Ltd. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all-other producers or exporters. Commerce has preliminarily determined the estimated weighted-average dumping margin for each of the individually examined respondents under section 776 of the Act. Although, pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances has been to calculate the all-others rate as a simple average of the alleged dumping margins from the petition,[8] the petitioners calculated only one estimated dumping margin in the petition (*i.e.,* 106.27 percent).[9] Therefore, consistent with Commerce's practice, we have preliminarily assigned the dumping margin of 106.27 percent as the all-others rate in this investigation.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer/exporter	Estimated weighted-average dumping margin (percent)
BRN Sleep Products	* 106.27
Fumeibai Industrial Co., Ltd	* 106.27
All Others	106.27

* Adverse Facts Available (AFA).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the

[1] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 57433 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair Value Investigations,* 88 FR 72737 (October 23, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from Bulgaria,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 57434.

[6] *See* Memorandum, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

[7] *Id.*

[8] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014).

[9] *See Initiation Notice,* 88 FR at 57436.

exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to the individually examined companies in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the petition, there are no calculations to disclose.

Verification

Because the individually examined respondents in this investigation did not provide information requested by Commerce, and Commerce preliminarily determines each of the examined respondents to have been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[11] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[12]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[13] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the time and date for the hearing.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine within the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: February 23, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed

[10] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(i) to alter the time limit for the filing of case briefs.

[11] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[14] *See APO and Service Final Rule.*

mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–04326 Filed 2–29–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The U.S. International Trade Commission (ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–475–818	731–TA–734	Italy	Pasta	Jacqueline Arrowsmith, (5th review) (202) 482–5255.
A–489–805	731–TA–735	Turkey	Pasta	Jacqueline Arrowsmith, (5th Review) (202) 482–5255.
C–475–819	701–TA–365	Italy	Pasta	Mary Kolberg, (5th Review) (202) 482–1785.
C–489–806	701–TA–366	Turkey	Pasta	Mary Kolberg, (5th Review) (202) 482–1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/*. All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[1]

Information Required from Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: February 14, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–04369 Filed 2–29–24; 8:45 am]

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[1] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[2] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–919]

Mattresses From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that mattresses from India are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2022, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Steven Seifert or Paul Senoyuit, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3350 or (202) 482–6106, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 23, 2023.[1] On October 3, 2023, Commerce postponed the preliminary determination of this investigation until February 23, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary

[1] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 57433 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 72737 (October 23, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from India'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are mattresses from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble,*[4] we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice.*

In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export price in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. In addition, Commerce has relied on partial facts available under section 776(a)(1) of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences for Raj Mahal Fabrics (Raj Mahal) and International Comfort Technologies Private Limited (ICT). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce preliminarily assigned a rate based entirely on facts available for Raj Mahal and ICT. Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Varahamurti Flexirub Industries Private Limited (VFI). Consequently, the rate calculated for VFI is also assigned as the rate for all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:[8]

Exporter/producer	Weighted-average dumping margin (percent)
International Comfort Technologies Private Limited; Sheela Foam Limited	*42.76
Raj Mahal Fabrics	*42.76
Varahamurti Flexirub Industries Private Limited; Amore International, Durfi Retail Private Limited; Springfit Marketing INC	23.28
All Others	23.28

*Adverse facts available.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination for VFI. Because Raj Mahal and ICT did not provide information requested by Commerce, and Commerce preliminarily determines each have been uncooperative, we will not conduct verification with respect to these companies.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation.[9] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[10] Interested

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 57434.

[6] *See* Memorandum, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

[7] *Id.*

[8] Commerce preliminarily determines that Varahamurti Flexirub Industries Private Limited, Amore International, Durfi Retail Private Limited and Springfit Marketing INC are a single entity. We also preliminarily determine that International Comfort Technologies Limited and Sheela Foam are a single entity. *See* Preliminary Decision Memorandum.

[9] *See* 19 CFR 351.309(c)(1)(i); *see also* 19 CFR 351.303 (for general filing requirements).

[10] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,*

Continued

parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[11]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[12] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the time and date for the hearing.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On February 16, 2024, pursuant to 19 CFR 351.210(e), VFI requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[14] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: February 23, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture,

88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[11] *See* 19 CFR 351.309(c)(2) and (d)(2).

[12] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[13] *See APO and Service Final Rule,* 88 FR at 67077.

[14] *See* VFI's Letter, ''Varahamurti's Request to Postpone Final Determination,'' dated February 16, 2024.

with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–04328 Filed 2–29–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–845]

Mattresses From Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that mattresses from Italy are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2022, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 23, 2023.[1] On October 23, 2023, Commerce postponed the preliminary determination of this investigation until February 23, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are mattresses from Italy. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble,*[4] we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.[7]

[1] *See Mattresses From Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 57433 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair Value Investigations,* 88 FR 72737 (October 23, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from Italy,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 57434.

[6] *See* Memorandum, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Preliminary Scope Decision Memorandum,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

[7] *Id.*

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available with adverse inferences for Gruppo Industriale Buoninfante (Buoninfante), Silver Prince S.R.L. (Silver Prince), and Alessanderx SpA (Alessanderx). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

On January 24, 2024, the petitioners [8] timely filed a critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise from Italy.[9]

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. We preliminarily determine that critical circumstances exist with respect to imports of mattresses from Italy. For a full description of the methodology underlying the preliminary critical circumstances determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers and exporters. Commerce has preliminarily determined the estimated weighted-average dumping margin for each of the individually examined respondents under section 776 of the Act. Although, pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances has been to calculate the all-others rate as a simple average of the alleged dumping margins from the petition,[10] the petitioners calculated only one estimated dumping margin in the petition (*i.e.,* 257.06 percent).[11] Therefore, consistent with Commerce's practice, we have preliminary assigned the dumping margin of 257.06 percent as the all-others rate in this investigation.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer/exporter	Weighted-average dumping margin (percent)
Gruppo Industriale Buoninfante S.P.A	*257.06
Silver Prince S.R.L	*257.06
Alessanderx SpA	*257.06
All Others	257.06

*Adverse Facts Available (AFA).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced or exported by the mandatory respondents and all other producers and/or exporters of mattresses from Italy.[12] In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of subject merchandise from all producers and exporters of mattresses from Italy that

[8] The petitioners are: Brooklyn Bedding LLC; Carpenter Co.; Corsicana Mattress Company; Future Foam, Inc.; FXI, Inc.; Kolcraft Enterprises, Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding, LLC; Southerland, Inc.; Tempur Sealy International; the International Brotherhood of Teamsters; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO.

[9] *See* Petitioners' Letter, ''Mattress Petitioners' Allegation of Critical Circumstances,'' dated January 24, 2024.

[10] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014).

[11] *See Initiation Notice,* 88 FR at 57436.

[12] *See* Preliminary Decision Memorandum.

were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice in the **Federal Register**. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to each of the individually examined companies in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the petition, there are no calculations to disclose.

Verification

Because the individually examined respondents in this investigation did not provide information requested by Commerce, and Commerce preliminarily determines each of the examined respondents to have been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination.[13] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[14] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[15]

As provided under 19 CFR 351.309(c)(2), in prior proceedings we have encouraged interested parties to provide a summary of their arguments in their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[16] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[17]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the time and date for the hearing. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: February 23, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any

[13] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(i) to alter the time limit for the filing of case briefs.

[14] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Final Service Rule*).

[15] *See* 19 351.309(c)(2) and (d)(2).

[16] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[17] *See APO and Service Final Rule.*

base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–04330 Filed 2–29–24; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[A–565–804]

Mattresses From the Philippines: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that mattresses from the Philippines are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2022, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado, 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) 482–4682.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 23, 2023.[1] On October 23, 2023, Commerce postponed the preliminary determination of this investigation until February 23, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are mattresses from the Philippines. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble,*[4] we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

In the Preliminary Scope Decision Memorandum, Commerce established

[1] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 57433 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair Value Investigations,* 88 FR 72737 (October 23, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from the Philippines,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 57434.

[6] *See* Memorandum, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

the deadline for parties to submit scope case and rebuttal briefs.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon the facts otherwise available with adverse inferences to assign the weighted-average dumping margin to the mandatory respondents. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

On January 24, 2024, the petitioners [8] timely filed a critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise from the Philippines.[9]

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. We preliminarily determine that critical circumstances exist with respect to imports of mattresses from the Philippines. For a full description of the methodology underlying the preliminary critical circumstances determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters. Commerce has preliminarily determined the estimated weighted-average dumping margin for the individually examined respondent under section 776 of the Act. Although, pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances has been to calculate the all-others rate as a simple average of the alleged dumping margins from the petition,[10] the petitioners calculated only one estimated dumping margin in the petition (*i.e.,* 538.23 percent).[11] Therefore, consistent with our practice, we preliminary assigned the dumping margin of 538.23 percent as the all-others rate in this investigation.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Weighted-average dumping margin (percent)
Maxiflex Philippines Corp./ Polyfoam-RGC International Corporation/Multiflex RNC Philippines, Inc./Multimax Industries Corporation [12]	* 538.23
All Others	538.23

* Adverse Facts Available (AFA)

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced or exported by the respondent and by all other producers/exporters from the Philippines. In accordance with section 733(e)(2)(A) of the Act, the

[7] *Id.*

[8] The petitioners are: Brooklyn Bedding; Carpenter Co.; Corsicana Mattress Company; Future Foam Inc.; FXI, Inc.; Kolcraft Enterprises Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding Inc.; Southerland, Inc.; Tempur Sealy International; the International Brotherhood of Teamsters; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[9] *See* Petitioners' Letter, ''*Mattress Petitioners' Allegation of Critical Circumstances,*'' dated January 24, 2024.

[10] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014).

[11] *See Initiation Notice,* 88 FR at 57436.

[12] Commerce preliminarily determines that Maxiflex Philippines Corp., Multiflex RNC Philippines, Inc., Multimax Industries Corporation, and Polyfoam-RGC International Corporation are a single entity. *See* the Preliminary Decision Memorandum.

suspension of liquidation shall apply to unliquidated entries of shipments of subject merchandise from the producer(s) or exporter(s) identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to the respondent in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the petition, there are no calculations to disclose.

Verification

Because the examined respondent in this investigation did not provide information requested by Commerce, and Commerce preliminarily determines that the examined respondent to have been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination.[13] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[14] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[15]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[16] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[17]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the time and date for the hearing. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: February 23, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group

[13] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(i) to alter the time limit for the filing of case briefs.

[14] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[15] *See* 19 CFR 351.309(c)(2) and (d)(2).

[16] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[17] *See APO and Service Final Rule.*

mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–04322 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–546–001]

Mattresses From Burma: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that mattresses from Burma are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2022, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Ajay Menon, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0208.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 23, 2023.[1] On October 23, 2023, Commerce postponed the preliminary determination of this investigation until February 23, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are mattresses from Burma. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble,*[4] we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6]

[1] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 57433 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 72737 (October 23, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from Burma,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 57434.

[6] *See* Memorandum, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Preliminary Scope Decision Memorandum: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available with adverse inferences for Glory Home Myanmar Limited (Glory Home) and Glory (Hong Kong) Business Limited (Glory Hong Kong). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

On January 24, 2024, the petitioners [8] timely filed a critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise from Burma.[9]

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. We preliminarily determine that critical circumstances exist with respect to imports of mattresses from Burma. For a full description of the methodology underlying the preliminary critical circumstances determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers and exporters. Commerce has preliminarily determined the estimated weighted-average dumping margin for the individually examined respondents under section 776 of the Act. Although, pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances has been to calculate the all-others rate as a simple average of the alleged dumping margins from the petition,[10] the petitioners calculated only one estimated dumping margin in the petition (*i.e.,* 181.71 percent).[11] Therefore, consistent with Commerce's practice, we have preliminary assigned the dumping margin of 181.71 percent as the all-others rate in this investigation.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Weighted-average dumping margin (percent)
Glory Home Myanmar Limited	* 181.71
Glory (Hong Kong) Business Limited	* 181.71
All Others	181.71

* Adverse Facts Available (AFA)

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct U.S Customs and Border Protection to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced or exported by Glory Home, Glory Hong Kong, and all other producers and/or exporters. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation

[7] *Id.*

[8] The petitioners are: Brooklyn Bedding LLC; Carpenter Co.; Corsicana Mattress Company; Future Foam, Inc.; FXI, Inc.; Kolcraft Enterprises, Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding, LLC; Southerland, Inc.; Tempur Sealy International; the International Brotherhood of Teamsters; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO.

[9] *See* Petitioners' Letter, ''Mattress Petitioners' Allegation of Critical Circumstances,'' dated January 24, 2024.

[10] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014).

[11] *See Initiation Notice,* 88 FR at 57436.

shall apply to all unliquidated entries of subject merchandise from all producers and exporters of mattresses from Burma that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to each of the individually examined companies in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the petition, there are no calculations to disclose.

Verification

Because the examined respondents in this investigation did not provide information requested by Commerce, and Commerce preliminarily determines each of the examined respondents to have been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination.[12] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[13] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[14]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[15] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the time and date for the hearing. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: February 23, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed

[12] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(i) to alter the time limit for the filing of case briefs.

[13] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[14] *See* 19 351.309(c)(2) and (d)(2).

[15] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[16] *See APO and Service Final Rule.*

mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–04325 Filed 2–29–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–859]

Mattresses From Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that mattresses (mattresses) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2022, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Dakota Potts or Benjamin Blythe, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0223 or (202) 482–3457, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 23, 2023.[1] On October 23, 2023, Commerce postponed the preliminary determination of this investigation until February 23, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are mattresses from Mexico. For a complete description of the scope of this investigation, *see Appendix I.*

Scope Comments

In accordance with the *Preamble,*[4] we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

[1] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 57433 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses From Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 72737 (October 23, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination of Sales at Less Than Fair Value in the Investigation of Mattresses from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 57434.

[6] *See* Memorandum, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Preliminary Scope Decision Memorandum,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices in accordance with sections 772(a) and (b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated an estimated weighted-average dumping margin above *de minimis* for one mandatory respondent, Ureblock S.A. de C.V. (Ureblock), and applied the preliminary estimated weighted-average dumping margin for one mandatory respondent and one voluntary respondent, GAIM Regiomontana SA De CV (GAIM) and Wendy Colchones S.A. de C.V. (Wendy), respectively, under section 776 of the Act. Therefore, consistent with our practice,[8] for the all-others rate in this investigation, we preliminarily assigned the above-*de minimis* dumping margin calculated for Ureblock as the all-others rate.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Weighted-average dumping margin (percent)
Ureblock S.A. de C.V./ Espumas de Oriente S.A. de C.V.[9]	41.29
GAIM Regiomontana SA De CV	*61.97
Wendy Colchones S.A. de C.V	*61.97
All Others	41.29

*Adverse Facts Available (AFA)

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rates for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[11] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[12]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[13] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the

[7] *Id.*

[8] *See Paper File Folders from India: Final Affirmative Determination of Sales at Less Than Fair Value,* 88 FR 69138 (October 5, 2023).

[9] Commerce preliminarily determines that Ureblock and Espumas de Oriente S.A. de C.V. (Espumas) are affiliated pursuant to section 771(33)(A) of the Act, and further that these companies should be treated as a single entity pursuant to 19 CFR 351.401(f). For further discussion, *see* Preliminary Decision Memorandum; *see also* Memorandum, ''Preliminary Determination Affiliation and Single Entity Memorandum for Ureblock S.A. de C.V. and Espumas de Oriente, S.A. de C.V.,'' dated concurrently with this notice.

[10] *See* 19 CFR 351.309(c)(1)(i); *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[12] *See* 19 351.309(c)(2) and (d)(2).

[13] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[14] *See APO and Service Final Rule.*

number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the time and date for the hearing. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners.[15] Section 351.210(e)(2) of Commerce's regulations requires that a request by an exporter for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.[16]

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination. On February 6, 2024, pursuant to 19 CFR 351.210(e), the petitioners requested that Commerce postpone the final determination in accordance with 19 CFR 351.210(b)(2)(i) if the preliminary determination in the investigation is negative. However, since the preliminary determination is affirmative, the petitioners' request for postponement is not applicable.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports of mattresses from Mexico are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This preliminary determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: February 23, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders, 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized

[15] The petitioners are Brooklyn Bedding LLC; Carpenter Co.; Corsicana Mattress Company; Future Foam, Inc.; FXI, Inc.; Kolcraft Enterprises, Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding, LLC; Southerland, Inc.; Tempur Sealy International; the International Brotherhood of Teamsters; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO.

[16] *See* 19 CFR 351.210(e)(2).

Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–04323 Filed 2–29–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–455–807]

Mattresses From Poland: Preliminary Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that mattresses (mattresses) from Poland are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2022, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Dakota Potts, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0223.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 23, 2023.[1] On October 23, 2023, Commerce postponed the preliminary determination for this investigation until February 23, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are mattresses from Poland. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble,*[4] we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon the facts otherwise available with adverse inferences for COM40 SP. Z O.O. SP. K., CORRECT–K BLASZCZYK I WSPOLNICY SPOLKA, ARJOHUNTLEIGH AB, and COM FORTY LIMITED SP. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters. Commerce has preliminarily determined the estimated weighted-average dumping margin for each of the individually examined respondents under section 776 of the Act. Although, pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances has been to calculate the all-others rate as a simple average of the alleged dumping margins from the petition,[8] the petitioners

[1] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 57433 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair Value Investigations,* 88 FR 72737 (October 23, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from Poland,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 57434.

[6] *See* Memorandum, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

[7] *Id.*

[8] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of*

Continued

calculated only one estimated dumping margin in the petition (*i.e.,* 330.71 percent).[9] Therefore, consistent with Commerce's practice, we have preliminary assigned the dumping margin of 330.71 percent as the all-others rate in this investigation.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
COM40 SP. Z O.O. SP. K	*330.71
CORRECT–K BLASZCZYK I WSPOLNICY SPOLKA	*330.71
ARJOHUNTLEIGH AB	*330.71
COM FORTY LIMITED SP ...	*330.71
All Others	330.71

*Adverse Facts Available (AFA)

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to each of the individually examined companies in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the petition, there are no calculations to disclose.

Verification

Because the individually examined respondents in this investigation did not provide information requested by Commerce, and Commerce preliminarily determines each of the examined respondents to have been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[11] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[12]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[13] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.[15] Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the time and date for the hearing. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether

Germany, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014).

[9] *See Initiation Notice,* 88 FR at 57436.

[10] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(i) to alter the time limit for the filing of case briefs.

[11] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[14] *See APO and Service Final Rule.*

[15] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(i) to alter the time limit for the filing of case briefs.

these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: February 23, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon. Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–04321 Filed 2–29–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the U.S. Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on

U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity to Request a Review: Not later than the last day of March 2024,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

	Period
Antidumping Duty Proceedings	
AUSTRALIA: Certain Uncoated Paper, A–602–807	3/1/23–2/29/24
BELGIUM: Acetone, A–423–814	3/1/23–2/29/24
BRAZIL: Certain Uncoated Paper, A–351–842	3/1/23–2/29/24
CANADA: Iron Construction Castings, A–122–503	3/1/23–2/29/24
FRANCE: Brass Sheet & Strip, A–427–602	3/1/23–2/29/24
GERMANY: Brass Sheet & Strip, A–428–602	3/1/23–2/29/24
INDIA:	
Granular Polytetrafluoroethylene Resin, A–533–899	3/1/23–2/29/24
Large Diameter Welded Pipe, A–533–881	3/1/23–2/29/24
Off-The-Road Tires, A–533–869	3/1/23–2/29/24
INDONESIA: Certain Uncoated Paper, A–560–828	3/1/23–2/29/24
ITALY: Brass Sheet & Strip, A–475–601	3/1/23–2/29/24
PORTUGAL: Certain Uncoated Paper, A–471–807	3/1/23–2/29/24
REPUBLIC OF KOREA: Acetone, A–580–899	3/1/23–2/29/24
RUSSIA:	
Silicon Metal, A–821–817	3/1/23–2/29/24

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

	Period
Granular Polytetrafluoroethylene Resin, A–821–829	3/1/23–2/29/24
SOUTH AFRICA:	
Acetone, A–791–824	3/1/23–2/29/24
Carbon and Alloy Steel Wire Rod, A–791–823	3/1/23–2/29/24
TAIWAN: Light-Walled Welded Rectangular Carbon Steel Tubing, A–583–803	3/1/23–2/29/24
THAILAND: Circular Welded Carbon Steel Pipes and Tubes, A–549–502	3/1/23–2/29/24
THE PEOPLE'S REPUBLIC OF CHINA:	
Ammonium Sulfate, A–570–049	3/1/23–2/29/24
Amorphous Silica Fabric, A–570–038	3/1/23–2/29/24
Biaxial Integral Geogrid Products, A–570–036	3/1/23–2/29/24
Certain Carbon and Alloy Steel Cut-To-Length Plate, A–570–047	3/1/23–2/29/24
Certain Corrosion Inhibitors, A–570–122	3/1/23–2/29/24
Certain Plastic Decorative Ribbon, A–570–075	3/1/23–2/29/24
Certain Uncoated Paper, A–570–022	3/1/23–2/29/24
Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof, A–570–119	3/1/23–2/29/24
Circular Welded Austenitic Stainless Pressure Pipe, A–570–930	3/1/23–2/29/24
Difluoromethane (R–32), A–570–121	3/1/23–2/29/24
Glycine, A–570–836	3/1/23–2/29/24
Large Diameter Welded Pipe, A–570–077	3/1/23–2/29/24
Pentafluoroethane (R–125), A–570–137	3/1/23–2/29/24
Sodium Hexametaphosphate, A–570–908	3/1/23–2/29/24
Certain Tissue Paper Products, A–570–894	3/1/23–2/29/24
UKRAINE: Carbon and Alloy Steel Wire Rod, A–823–816	3/1/23–2/29/24
Countervailing Duty Proceedings	
INDIA:	
Barium Chloride, C–533–909	6/17/22–12/31/23
Fine Denier Polyester Staple Fiber, C–533–876	1/1/23–12/31/23
Granular Polytetrafluoroethylene Resin, C–533–900	1/1/23–12/31/23
Large Diameter Welded Pipe, C–533–882	1/1/23–12/31/23
Off-The-Road Tires, C–533–870	1/1/23–12/31/23
INDONESIA: Certain Uncoated Paper, C–560–829	1/1/23–12/31/23
IRAN: In-Shell Pistachios, C–507–501	1/1/23–12/31/23
RUSSIA: Granular Polytetrafluoroethylene Resin, C–821–830	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA:	
Ammonium Sulfate, C–570–050	1/1/23–12/31/23
Amorphous Silica Fabric, C–570–039	1/1/23–12/31/23
Biaxial Integral Geogrid Products, C–570–037	1/1/23–12/31/23
Carbon and Alloy Steel Cut-To-Length Plate, C–570–048	1/1/23–12/31/23
Certain Corrosion Inhibitors, C–570–123	1/1/23–12/31/23
Certain Plastic Decorative Ribbon, C–570–076	1/1/23–12/31/23
Certain Uncoated Paper, C–570–023	1/1/23–12/31/23
Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof, C–570–120	1/1/23–12/31/23
Circular Welded Austenitic Stainless Pressure Pipe, C–570–931	1/1/23–12/31/23
Fine Denier Polyester Staple Fiber, C–570–061	1/1/23–12/31/23
Large Diameter Welded Pipe, C–570–078	1/1/23–12/31/23
Pentafluoroethane (R–125), C–570–138	1/1/23–12/31/23
TURKEY: Circular Welded Carbon Steel Pipes and Tubes, C–489–502	1/1/23–12/31/23
Suspension Agreements	
ARGENTINA:	
White Grape Juice Concentrate, A–357–825	3/17/23–2/29/24
White Grape Juice Concentrate, C–357–826	3/17/23–12/31/23

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings:*

Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov.*[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of March 2024. If Commerce does not receive, by the last day of March 2024, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[8] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[10]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [11]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[12] Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For

[3] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[8] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[10] *Id.*

[11] This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[12] *See Procedural Guidance,* 86 FR at 53206.

these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[13] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [14] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 22, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–04390 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–DS–P

[13] *See Final Rule,* 86 FR at 52335.

[14] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–893–002]

Mattresses From Bosnia and Herzegovina: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that mattresses from Bosnia and Herzegovina are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2022, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Amaris Wade or Christopher Hargett, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6334 or (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 23, 2023.[1] On October 23, 2023, Commerce postponed the preliminary determination of this investigation until February 23, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are mattresses from Bosnia and Herzegovina. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble,*[4] we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

In the Preliminary Scope Decision Memorandum, Commerce established

[1] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma., India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 57433 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 88 FR 72737 (October 23, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from Bosnia and Herzegovina,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 57434.

[6] *See* Memorandum, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

the deadline for parties to submit scope case and rebuttal briefs.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon the facts otherwise available with adverse inferences for Noctis D.O.O., Mirisan D.O.O, and General Toys Co., Limited. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

On January 24, 2024, the petitioners [8] timely filed a critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise from Bosnia and Herzegovina.[9]

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. We preliminarily determine that critical circumstances exist with respect to imports of mattresses from Bosnia and Herzegovina. For a full description of the methodology underlying the preliminary critical circumstances determination, *see* the Preliminary Decision Memorandum.

[7] *Id.*

[8] The petitioners are: Brooklyn Bedding LLC; Carpenter Co.; Corsicana Mattress Company; Future Foam, Inc.; FXI, Inc.; Kolcraft Enterprises, Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding, LLC; Southerland, Inc.; Tempur Sealy International; the International Brotherhood of Teamsters; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO.

[9] *See* Petitioners' Letter, ''Mattress Petitioners' Allegation of Critical Circumstances,'' dated January 24, 2024.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers and exporters. Commerce has preliminarily determined the estimated weighted-average dumping margin for each of the individually examined respondents under section 776 of the Act. Although pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances has been to calculate the all-others rate as a simple average of the alleged dumping margins from the petition,[10] the petition in this case included only one alleged dumping margin, revised for the initiation of this investigation (*i.e.,* 217.38).[11] Accordingly, we are using the dumping margin on which we initiated as the basis for the all-others rate.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter or producer	Weighted-average dumping margin (percent)
General Toys Co., Limited	*217.38
Mirisan D.O.O	*217.38
Noctis D.O.O	*217.38
All Others	217.38

*Adverse Facts Available (AFA).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Section 733(e)(2) of the Act provides that, given a preliminary affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date that is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced or exported by the mandatory respondents and all other producers and exporters of mattresses from Bosnia and Herzegovina.[12] In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of subject merchandise from all producers and exporters of mattresses from Bosnia and

[10] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014).

[11] *See Initiation Notice,* 88 FR at 57436.

[12] *See* Preliminary Decision Memorandum.

Herzegovina that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice in the **Federal Register**. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to each of the individually examined companies in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the petition, there are no calculations to disclose.

Verification

Because the individually examined respondents in this investigation did not provide the information requested by Commerce, and Commerce preliminarily determines each of the examined respondents to have been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination.[13] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[14] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[15]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[16] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[17]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the time and date for the hearing. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: February 23, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed

[13] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(i) to alter the time limit for the filing of case briefs.

[14] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[15] *See* 19 CFR 351.309(c)(2) and (d)(2).

[16] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[17] *See APO and Service Final Rule.*

mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–04327 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD742]

Western Pacific Fishery Management Council; Public Meetings; Correction

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

ACTION: Notice of correction of a public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 151st Scientific and Statistical Committee (SSC), Executive and Budget Standing Committee (SC) and its 198th Council meeting to take actions on fishery management issues in the Western Pacific Region. The Council will also hold a joint meeting of the Advisory Panel (AP), the Fishing Industry Advisory Committee (FIAC), and the Non-Commercial Fisheries Advisory Committee (NCFAC). The correction is for the Executive and Budget SC to be held on March 15, 2024. See **SUPPLEMENTARY INFORMATION**.

DATES: The meetings will be held between March 12 and March 20, 2024.

ADDRESSES: The 151st SSC meeting will be held as a hybrid meeting for SSC members and the public, with a remote participation option available via WebEx. In-person attendance will be hosted at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

The Joint Meeting of the AP, FIAC, and NCFAC, and the 198th Council Meeting will be held as hybrid meetings for the advisory body members, Council members and the public, with a remote participation option available via Webex. In-person attendance will be hosted at the Ala Moana Hotel, Hibiscus Ballroom, 410 Atkinson Drive, Honolulu, HI 96814.

Specific information on joining the meeting, connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The original meeting notice published in the **Federal Register** on February 27, 2024 (89 FR 14444). The original notice stated that the Executive and Budget SC meeting will be held as a hybrid meeting for members and the public, with a remote participation option available via WebEx. In-person attendance will be hosted at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

This notice corrects that meeting to read the Executive and Budget SC meeting will be held by web conference via Webex.

All other previously-published information remains the same.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–04342 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD751]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a public meeting.

DATES: The meeting will be held on Tuesday, March 19, 2024, from 10 a.m.

to 5 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar using the Webex platform with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *www.mafmc.org/ssc.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: During this meeting, the SSC will review and provide feedback on the most recent Mid-Atlantic State of the Ecosystem report, the Ecosystem Approach to Fisheries Management risk assessment, and the work plan/products of the SSC's Ecosystem Work Group. The SSC will receive an overview of the Northeast Fisheries Science Center Cooperative Research Program activities. In addition, the SSC will discuss the activities and future products of the Overfishing Limit (OFL) Coefficient of Variation (CV) subgroup. Under ''Other Business'', the SSC will discuss a number of topics including: the Scientific Coordination Sub-Committee 8th National Workshop, outcomes from a recent workshop on defining biological reference points, the 2024–2025 stock assessment schedule, and 2024 SSC meeting plans. The SSC may take up any other business as necessary.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–04348 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD741]

Takes of Marine Mammals Incidental To Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the New York Bight

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

ACTION: Notice; issuance of renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a renewal incidental harassment authorization (IHA) to Bluepoint Wind, LLC, (BPW) to incidentally harass marine mammals incidental to marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, specifically within the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (Lease) Area OCS–A 0537 and associated export cable route (ECR) area.

DATES: This renewal IHA is valid from March 1, 2024, through February 28, 2025.

ADDRESSES: Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, see **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are promulgated or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). NMFS must also prescribe requirements pertaining to monitoring and reporting of such takings. The definition of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in the MMPA and NMFS's implementing regulations (see 16 U.S.C 1362; 50 CFR 216.103).

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial IHA, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned, or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

History of Request

On February 28, 2023, NMFS issued an IHA to BPW to take marine mammals incidental to conducting marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, specifically within the BOEM Lease Area OCS–A 0537 and associated ECR area (88 FR 13783, March 6, 2023), effective from March 1, 2023, through February 29, 2024. On December 21, 2023, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-bluepoint-wind-llc-marine-site-characterization-surveys-new*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed renewal incidental harassment authorization was published for public comment on January 31, 2024 (89 FR 6092).

Description of the Specified Activities and Anticipated Impacts

BPW's initial IHA included conducting marine site characterization surveys, including high-resolution geophysical (HRG) surveys, in coastal waters off of New Jersey and New York in the New York Bight, specifically within the BOEM Lease Area OCS–A 0537 and associated ECR area. Challenges and delays with procurement, mobilization, and downtime contributed to less survey effort being completed during the initial IHA period than anticipated.

The surveys were designed to obtain data sufficient to meet BOEM guidelines for providing geophysical, geotechnical, and geohazard information for site assessment plan surveys and/or construction and operations plan development. The objective of the surveys was to support the site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Lease Area. At least two survey vessels would operate as part of the planned surveys with a maximum of two nearshore (<20 meters (m)) vessels and a maximum of two offshore (≥20 m) vessels operating concurrently.

BPW is planning to continue to conduct survey activities as per the initial IHA application up to approximately 17,008 kilometers (km) of trackline, which would be conducted over up to approximately 335 days across multiple vessels (in the same manner as the initial IHA). This is a subset of the survey trackline included in the initial IHA. The initial survey plan included 13,268 km of trackline in the ECR survey area and 9,923 km in the Lease Area (total of 23,191 km) using the sparker for all survey activities as a conservative operational scenario. Through the expiration of the initial IHA, BPW expects to survey 6,183 km of trackline, leaving 17,008 km remaining from the initial request (up to 10,299 km in the ECR survey area and 6,709 km in the Lease Area).

The potential impacts of BPW's activity on marine mammals could involve acoustic stressors and are unchanged from the impacts described in the notice of the proposed IHA (88 FR 2325, January 13, 2023). Acoustic stressors include effects of the marine site characterization surveys. The effects of underwater disturbance from the BPW's activities have the potential to result in Level B harassment of marine mammals in the specified geographic region.

This renewal IHA is for the remainder of work that will not be completed by the expiration of the initial IHA. The renewal IHA would authorize incidental take, by Level B harassment only (in the form of behavioral disturbance), of 15 species (16 stocks) of marine mammals for a subset of marine site characterization survey activities to be completed in 1 year, in the same area, using survey methods identical to those described in the initial IHA application. Therefore, the anticipated effects on marine mammals and the affected stocks also remain the same. All mitigation, monitoring, and reporting measures would remain exactly as described in the **Federal Register** notice of the issued initial IHA (88 FR 13783, March 6, 2023).

Detailed Description of the Activity

A detailed description of the marine site characterization survey activities for which incidental take is authorized here, may be found in the **Federal Register** notice of the proposed IHA (88 FR 2325, January 13, 2023) for the initial authorization. The location and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. The renewal would be effective for a period not exceeding 1 year from the date of expiration of the initial IHA.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take is authorized, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (88 FR 2325, January 13, 2023). NMFS has reviewed the finalized 2022 Stock Assessment Reports (SARs), which included updates to certain stock abundances since the initial IHA was issued, information on relevant Unusual Mortality Events, and other scientific literature. In August 2023 after the initial IHA was issued, NMFS released

its final 2022 SARs, which updated the population estimate (N_{best}) of North Atlantic right whales from 368 to 338 and annual mortality and serious injury increased from 8.1 to 31.2. This large increase in annual serious injury/mortality is a result of NMFS including undetected annual mortality and serious injury in the total annual serious injury/mortality, which had not been previously included in the SARs. The population estimate is slightly lower than the North Atlantic Right Whale Consortium's 2022 Report Card, which identifies the population estimate as 340 individuals (Pettis *et al.,* 2023). The 2022 SAR and NARWC estimates are based on sighting history through November 2020 (Hayes *et al.,* 2023). In October 2023, NMFS released a technical report identifying that the North Atlantic right whale population size based on sighting history through 2022 was 356 whales, with a 95 percent credible interval ranging from 346 to 363 (Linden, 2023). NMFS has determined that neither this nor any other new information affects which species or stocks have the potential to be affected or any other pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered North Atlantic right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921, August 1, 2022). Should a final vessel speed rule be issued and become effective during the effective period of this proposed Renewal IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. These changes would become effective immediately upon the effective date of any final vessel speed rule and would not require any further action on NMFS's part.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (88 FR 2325, January 13, 2023). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment Reports, information on relevant Unusual Mortality Events, other scientific literature, and the public comments, and determined that there is no new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the Notices of the Proposed and Final IHAs for the initial authorization (88 FR 2325, January 13, 2023; 88 FR 13783, March 6, 2023). Specifically, the source levels, days of operation, and marine mammal density/occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA. The number of takes authorized in this renewal IHA are a subset of the initial authorized takes that better represent the amount of activity BPW has left to complete. These estimated takes, which reflect the remaining survey days, are indicated below in table 1.

TABLE 1—NUMBER OF TAKES BY LEVEL B HARASSMENT BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Common name	Authorized take	Population abundance	Percent of population
North Atlantic right whale	11	338	3.3
Fin whale	63	6,802	0.9
Sei whale	15	6,292	0.2
Minke whale	149	21,968	0.7
Humpback whale	27	1,396	1.9
Sperm whale	5	4,349	0.1
Atlantic white-sided dolphin	316	93,233	0.3
Atlantic spotted dolphin	162	39,921	0.4
Bottlenose dolphin (West North Atlantic Offshore)	204	62,851	0.3
Bottlenose dolphin (Northern Migratory Coastal)	730	6,639	11
Long-finned pilot whale	50	39,215	0.1
Risso's dolphin	38	35,215	0.1
Common dolphin	3,456	172,947	2
Harbor porpoise	958	95,543	1
Gray seal	861	27,300	3.2
Harbor seal	861	61,366	1.4

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (88 FR 13783, March 6, 2023), and the discussion of the least practicable adverse impact included in that document and the Notice of the proposed IHA remains accurate (88 FR 2325, January 13, 2023). The following measures for this renewal include:

- *Ramp-up:* A ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities;
- *Protected Species Observers:* A minimum of one NMFS-approved Protected Species Observer (PSO) must

be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations;

- *Pre-Operation Clearance Protocols:* Prior to initiating HRG survey activities, BPW would implement a 30-minute pre-operation clearance period. If any marine mammals are detected within the Exclusion Zones prior to or during ramp-up, the HRG equipment would be shut down (as described below);
- *Shutdown Zones:* If an HRG source is active and a marine mammal is observed within or entering a relevant shutdown zone, an immediate shutdown of the HRG survey equipment would be required. Note this shutdown requirement would be waived for certain genera of small delphinids and pinnipeds;
- *Vessel Strike Avoidance Measures:* Separation distances for large whales (500 m for North Atlantic right whales; 100 m for sperm whales and all other baleen whales; 50 m for all other marine mammals); restricted vessel speeds and operational maneuvers; and
- *Reporting:* BPW will submit a marine mammal report within 90 days following completion of the surveys.

Comments and Responses

A notice of NMFS' proposal to issue a renewal IHA to BPW was published in the **Federal Register** on January 31, 2024 (89 FR 6092). That notice either described, or referenced descriptions of, BPW's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received no public comments.

Determinations

BPW's activities consist of a subset of activities analyzed in the initial IHA. In analyzing the effects of the activities for the initial IHA, NMFS determined that BPW's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable adverse impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) BPW's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified for categorical exclusion from further NEPA review. NMFS has determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

NMFS Office of Protected Resources has authorized the incidental take of four species of marine mammals which are listed under the ESA (the North Atlantic right, fin, sei, and sperm whale) and has determined that these activities fall within the scope of activities analyzed in GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021). The Renewal IHA provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require reinitiation of consultation with NMFS GARFO; therefore, the ESA consultation has been satisfied for the initial IHA and remains valid for the Renewal IHA.

Renewal

NMFS has issued a renewal IHA to BPW for the take of marine mammals incidental to conducting marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, from March 1, 2024, through February 28, 2025.

Dated: February 27, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–04391 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD762]

Endangered and Threatened Species: Expiration of Nonessential Experimental Population Designation for Middle Columbia River Steelhead Upstream of Round Butte Dam, Deschutes River Basin, Oregon

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

ACTION: Notice.

SUMMARY: NMFS hereby gives notice that the nonessential experimental population (NEP) designation and accompanying protective measures for Middle Columbia River (MCR) steelhead occurring in all accessible reaches upstream of Round Butte Dam on the Deschutes River, Oregon, shall expire at midnight (00:00 hours; Pacific Standard Time) on January 15, 2025. Upon expiration, all steelhead that occur upstream of Round Butte Dam will be designated as threatened under the Endangered Species Act (ESA). This notice does not extend the upstream limit of existing critical habitat for MCR steelhead in the Deschutes River, nor does it designate new critical habitat.

FOR FURTHER INFORMATION CONTACT: Scott Carlon, Portland, Oregon, (971) 322–7436, email: *scott.carlon@noaa.gov.*

SUPPLEMENTARY INFORMATION: On March 25, 1999, we listed the MCR steelhead distinct population segment (DPS) as threatened under the ESA (64 FR 14517). The MCR steelhead DPS range covers approximately 35,000 square miles (90,650 square kilometers (km)) of the Columbia plateau in eastern Oregon and eastern Washington. The Deschutes River in central Oregon is one of six major river basins supporting steelhead in this distinct population segment. Since about 1968, the Pelton Round Butte Hydroelectric Project (Pelton Round Butte Project) on the Deschutes River entirely blocked MCR steelhead from accessing nearly 200 miles (322 km) of historical spawning and rearing habitat. In 2005, the Federal Energy Regulatory Commission issued a new 50-year license for the Pelton Round Butte Project. The new license required fish passage and the ensuing reintroduction of anadromous fish to historic habitat upstream of the Pelton Round Butte Project.

The specific stock chosen to initiate steelhead reintroduction was from the Round Butte Hatchery, a stock that was not included in the original 1999 ESA listing. After the new license was issued in June 2005 and reintroduction planning was largely completed, we included the Round Butte Hatchery steelhead stock as part of the threatened group of steelhead (71 FR 834, January 5, 2007), thus the reintroduction introduced ESA take liabilities to land and water users upstream of the Pelton Round Butte Project. We subsequently issued a final rule for the NEP designation that had an expiration date 12 years from the effective date of the final rule (78 FR 2893, January 15, 2013). More information about this designation, including the additional protective measures can be found in the **Federal Register** notice for that final rule.

The purpose of the NEP designation was to temporarily lift certain take liabilities and consultation requirements to allow time for local landowners and municipalities to develop well-informed conservation measures to support the reintroduction effort in the Upper Deschutes River basin. Subsequent to the NEP designation, eight irrigation districts and one municipality completed a large habitat conservation plan containing measures that address potential impacts to anadromous fish species including MCR steelhead. The habitat conservation plan addresses nearly all the waters that support MCR steelhead, and we recently issued an incidental take permit to the eight irrigation districts and municipality under section 10(a)(1)(B) of the ESA (88 FR 3392, January 19, 2023).

Dated: February 26, 2024.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–04311 Filed 2–29–24; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

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

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
5350–00–187–6272—Cloth, Abrasive, Aluminum-oxide, 100 Grit, Jean Back, Grey, 50 Yard, 1″, BX/10
5350–00–187–6283—Cloth, Abrasive, Aluminum-oxide, 100 Grit, Jean Back, Grey, 50 Yard, 1½″, BX/10
5350–00–187–6281—Cloth, Abrasive, Aluminum-oxide, 150 Grit, Jean Back, Grey, 50 Yard, 1½″, BX/10
5350–00–229–3080—Cloth, Abrasive, Aluminum-oxide, 240 Grit, Jean Back, Grey, 50 Yard, 3″, BX/10
5350–00–229–3094—Cloth, Abrasive, Aluminum-oxide, 150 Grit, Jean Back, Grey, 50 Yard, 3″

Authorized Source of Supply: Louisiana Association for the Blind, Shreveport, LA

Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

NSN(s)—Product Name(s):
8410–01–456–5800—Slacks, Dress, Navy, Women's, Blue, 18JR
8410–01–456–5766—Slacks, Dress, Navy, Women's, Blue, 22WT
8410–01–456–5769—Slacks, Dress, Navy, Women's, Blue, 24JP
8410–01–456–5780—Slacks, Dress, Navy, Women's, Blue, 18JP
8410–01–456–5771—Slacks, Dress, Navy, Women's, Blue, 24JR
8410–01–456–5774—Slacks, Dress, Navy, Women's, Blue, 24P
8410–01–456–5784—Slacks, Dress, Navy, Women's, Blue, 24WR
8410–01–456–5786—Slacks, Dress, Navy, Women's, Blue, 24WT
8410–01–456–5790—Slacks, Dress, Navy, Women's, Blue, 26JP
8410–01–456–5794—Slacks, Dress, Navy, Women's, Blue, 26JR
8410–01–456–5803—Slacks, Dress, Navy, Women's, Blue, 18WT
8410–01–456–5806—Slacks, Dress, Navy, Women's, Blue, 20JP
8410–01–456–5808—Slacks, Dress, Navy, Women's, Blue, 20JR
8410–01–456–5809—Slacks, Dress, Navy, Women's, Blue, 20P
8410–01–456–5812—Slacks, Dress, Navy, Women's, Blue, 20WT
8410–01–456–5814—Slacks, Dress, Navy, Women's, Blue, 22JP
8410–01–456–5815—Slacks, Dress, Navy, Women's, Blue, 22JR
8410–01–456–5817—Slacks, Dress, Navy, Women's, Blue, 22P
8410–01–456–5820—Slacks, Dress, Navy, Women's, Blue, 22R
8410–01–456–6281—Slacks, Dress, Navy, Women's, Blue, 26MP
8410–01–456–6286—Slacks, Dress, Navy, Women's, Blue, 26R
8410–01–456–6290—Slacks, Dress, Navy, Women's, Blue, 26MT
8410–01–456–6292—Slacks, Dress, Navy, Women's, Blue, 26WR
8410–01–456–6295—Slacks, Dress, Navy, Women's, Blue, 26WT
8410–01–456–6302—Slacks, Dress, Navy, Women's, Blue, 22MT
8410–00–0SL–K608—Slacks, Dress, Navy, Women's, Blue, Special Measurement
8410–01–373–4404—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 4P
8410–01–373–4405—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 6MP
8410–01–373–4406—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 6WP
8410–01–373–4407—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 6WR
8410–01–373–4408—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 8P
8410–01–373–4409—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 8MT

8410–01–373–4410—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 8WP
8410–01–373–4411—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 8WR
8410–01–375–4827—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 10WT
8410–01–375–4828—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 12JP
8410–01–375–4829—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 12JR
8410–01–375–4830—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 12P
8410–01–375–4831—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 12T
8410–01–375–4832—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 12WP
8410–01–375–4833—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 12WR
8410–01–375–4834—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 12WT
8410–01–375–4835—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 14JP
8410–01–375–4836—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 14JR
8410–01–375–4837—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 14JT
8410–01–375–4838—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 14P
8410–01–375–4839—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 14T
8410–01–375–4840—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 14WP
8410–01–375–4841—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 14WR
8410–01–375–4842—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 14WT
8410–01–375–4843—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 16JP
8410–01–375–4844—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 16JR
8410–01–375–4845—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 16P
8410–01–375–4846—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 16T
8410–01–375–4847—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 16WR
8410–01–375–4848—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 16WT
8410–01–375–4849—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 18P
8410–01–375–4850—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 18T
8410–01–375–4851—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 18WR
8410–01–375–4852—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 4R
8410–01–375–4853—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 6MR
8410–01–375–4854—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 8MR
8410–01–375–4855—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 10R
8410–01–375–4856—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 12R
8410–01–375–4857—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 14R
8410–01–375–4858—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 16R
8410–01–375–4859—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 18R
8410–01–375–4860—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 20MR
8410–01–377–9378—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 10WR
8410–01–377–9434—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 10JR
8410–01–377–9508—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 10T
8410–01–377–9717—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 10WP
8410–01–377–9737—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 10JP
8410–01–377–9791—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 10JT
8410–01–377–9799—Slacks, Commissioned and Enlisted, Navy, Women's, Blue, 10P
8410–01–456–5779—Slacks, Dress, Navy, Women's, Blue, 24 Misses Regular
8410–01–456–5781—Slacks, Dress, Navy, Women's, Blue, 24 Misses Tall
8410–01–456–5810—Slacks, Dress, Navy, Women's, Blue, 20 Misses Tall
8410–01–456–5811—Slacks, Dress, Navy, Women's, Blue, 20 Women's Regular
8410–01–456–6306—Slacks, Dress, Navy, Women's, Blue, 22 Women's Regular

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
7210–00–259–9006—Pillowcase, Cotton/Polyester, White, 20½″ x 32½″

Authorized Source of Supply: The Lighthouse for the Blind in New Orleans, Inc., New Orleans, LA

Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

Service(s)

Service Type: Furniture Design and Configuration Services

Mandatory for: Rhode Island National Guard, 30 Camp Street, Providence, RI

Authorized Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

Contracting Activity: DEPT OF THE ARMY, W7NY USPFO ACTIVITY RI ARNG

Dated: February 23, 2024.

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2024–04360 Filed 2–29–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* March 31, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 12/15/2023, the Committee for Purchase From People Who Are Blind or Severely Disabled (operating as the U.S. AbilityOne Commission) published an initial notice of proposed additions to the Procurement List (88 FR 86884). The Committee determined that the Operation of Postal Service Center and Official Mail Center listed below is suitable for procurement by the Federal Government and has added this/these (service) to the Procurement List as a mandatory purchase for the DEPT OF THE AIR FORCE, FA9301 AFTC PZIO. In accordance with 41 CFR 51–5.3(b), the mandatory purchase requirement is limited to U.S. Air Force at Edward Air

Force Base, CA, and in accordance with 41 CFR 51–5.2, the Committee has authorized VersAbility Resources, Inc., Hampton, VA as the source of supply.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service(s) to the Government.

2. The action will result in authorizing small entities to furnish the service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Operation of Postal Service Center and Official Mail Center
Mandatory for: US Air Force, Official Mail Center, Edwards Air Force Base, CA
Authorized Source of Supply: VersAbility Resources, Inc., Hampton, VA
Contracting Activity: DEPT OF THE AIR FORCE, FA9301 AFTC PZIO

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated because of the expiration of the U.S. Air Force, Official Mail Center & Postal Service Center, Edwards Air Force Base, CA contract. The Federal customer contacted and has worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the U.S. Air Force will refer its business elsewhere, this addition must be effective on 3/24/2024, ensuring timely execution for a 4/1/2024 start date while still allowing 23 days for comment. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on 12/15/2023 and did not receive any comments from any interested persons. This addition will not create a public hardship and has limited effect on the public at large, but, rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

Deletions

On 1/26/2024, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7510–01–484–4561—Refill, Rubberized Ballpoint Stick Pen w Chain, Black Ink, Medium Point
Authorized Source of Supply: Alphapointe, Kansas City, MO
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
7520–01–584–0881—Holder, Note, Sticky, Rosewood
Authorized Source of Supply: Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2024–04354 Filed 2–29–24; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 12:30 p.m. EST, Friday, March 8, 2024.

PLACE: Virtual meeting.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement and examination matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/*.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: February 28, 2024.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024–04471 Filed 2–28–24; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, March 6, 2024—9:00 a.m. Open; and Wednesday, March 6, 2024—10:00 a.m. Closed (See **MATTERS TO BE CONSIDERED** for each meeting).

PLACE: Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, MD.

STATUS: Commission Meetings—Open to the Public (9:00 a.m.) and Closed to the Public (10:00 a.m.)

MATTERS TO BE CONSIDERED:

Open Session

Briefing on Notice of Proposed Rulemaking—Safety Standard For Bassinets.

A live webcast of the meeting can be viewed at the following link:

https://cpsc.webex.com/cpsc/j.php?MTID=mc6b3eb323e9fa7d92befe190d201ba57.

Closed Session

Briefing on multiple matters.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: February 28, 2024.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2024–04498 Filed 2–28–24; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Legislative Environmental Impact Statement Regarding Requested Public Land Withdrawal in Vicinity of Highway 95 and Yuma Proving Ground, Arizona

AGENCY: Department of the Army, Department of Defense.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of the Army (Army) announces the availability of a Draft Legislative Environmental Impact Statement (Draft LEIS) regarding a requested public land withdrawal in the vicinity of Highway 95 and Yuma Proving Ground, Arizona. In accordance with the National Environmental Policy Act (NEPA), the LEIS analyzes the potential environmental effects resulting from the withdrawal and reservation for military purposes of approximately 22,000 acres of public land managed by the U.S. Department of the Interior's Bureau of Land Management (BLM). If enacted into law by Congress, the withdrawal would add acreage to Yuma Proving Ground (YPG). The Army requires the additional land as a safety buffer for testing advanced air delivery technologies and aviation systems. An LEIS is being prepared for this proposed action because the withdrawal and reservation require congressional action.

DATES: Comments must be received by April 15, 2024.

ADDRESSES: The public can review a copy of the Draft LEIS at the Main Yuma Library (2951 S 21st Dr., Yuma, AZ 85364) or at the Quartzsite Public Library (465 N Plymouth Ave., Quartzsite, AZ 85346).

The Draft LEIS is also available as an electronic file on the YPG project website: *https://ypg-environmental.com/highway-95-land-withdrawal-leis/.*

Written comments may be sent by regular mail to the YPG Environmental Sciences Division, 301 C St., Bldg. 307, Yuma, AZ 85365. Comments may also be sent via email to: *usarmy.ypg.imcom.mbx.nepa@army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Steward, YPG Environmental Sciences Division, via email at *usarmy.ypg.imcom.mbx.nepa@army.mil* or via phone at (928) 328–2125.

SUPPLEMENTARY INFORMATION: The Army prepared this Draft LEIS in accordance with: NEPA (title 42 of the United States Code, section 4321); Council on Environmental Quality NEPA regulations (title 40 of the Code of Federal Regulations [CFR] parts 1500–1508); and the Army's NEPA implementing regulation (32 CFR part 651).

YPG is located in the southwestern corner of Arizona, near the California-Arizona border. The Colorado River bounds it to the west and the Gila River bounds it to the south. The installation lies approximately 23 miles northeast of the city of Yuma, Arizona. YPG is situated in both La Paz and Yuma Counties, Arizona, and the requested 22,000-acre withdrawal involves land in each county. YPG occupies about 1,300 square miles and extends approximately 60 miles north to south and 50 miles east to west.

YPG's mission is to plan, conduct, assess, analyze, report, and support developmental, production, and operational tests on the following: medium- and long-range artillery; aircraft target acquisition equipment and armament; armored tracked and wheeled vehicles; a variety of munitions; and parachute systems for personnel and supplies. YPG also provides training support to the Army, other Department of Defense branches, other federal agencies, and international and commercial customers.

The Draft LEIS analyzes the potential impacts of a legislative withdrawal and reservation for military purposes of approximately 22,000 acres of public land managed by BLM. The requested action involves the withdrawal of the land from all forms of appropriation (such as mining claims) and an additional 800 acres of federal surface estate (meaning the subsurface is not included). The land lies between the current boundary of YPG and a section of Highway 95 between mile marker 76 and mile marker 91. The Army requires the additional land as a safety buffer to improve public safety and to meet testing and training requirements for advances in parachute technologies. If enacted into law, the withdrawal would add to—and be adjacent to—the 829,565 acres withdrawn on July 1, 1952, under Public Land Order No. 848, as amended, for use by the Army in connection with Yuma Test Station (currently known as YPG). The Army will request that the 22,000-acre withdrawal be for an indefinite period—*i.e.,* until there is no longer a military need for the land.

The purpose of the requested land withdrawal is to provide additional area to support testing and training at YPG. The Army requires the additional land as a safety buffer for testing advanced air delivery technologies and aviation systems. The additional land will provide a larger surface safety zone and will allow the Army to execute more complex air delivery and tactical scenarios than are currently possible. A surface safety zone is an area in space and on the ground that provides an additional buffer in case of error or failure during testing or training. Surface safety zones protect people from being injured by material dropping from the sky during air delivery testing and training. Higher altitudes and greater offset distances are required to test parachute systems' full capabilities, and this testing requires a correspondingly greater surface safety zone.

Due to land and airspace limitations, systems are currently not tested to their full capability for altitude and precision. Without the requested withdrawal, mission-required drops could land outside the YPG boundary and could result in injury or death to members of the public. The requested land withdrawal would restrict the public from accessing hazardous areas, thus reducing the potential for such injuries and deaths.

The existing boundary between YPG and BLM land lacks a contiguous physical landmark demarcating the two areas, which has led to unintentional public intrusions onto YPG. The requested withdrawal area extends to Highway 95 and would establish the highway as a distinct physical landmark for the YPG boundary, thereby improving public safety.

In addition to the Army's proposed action, the Draft LEIS analyzes an alternative involving a withdrawal for a shorter period and a No-Action Alternative. Under a limited-duration withdrawal, Congress would withdraw and reserve for Army use the same area with the same boundary and land-management provisions as the proposed action, but the duration of the Highway 95 withdrawal would be limited to a shorter period (*i.e.,* 25 years).

Under the No-Action Alternative, Congress would not enact legislation to withdraw and reserve the land. BLM would retain management responsibility for the 22,000 acres of public land. Under this alternative, YPG would not meet mission requirements, but limited military testing and training would continue within the present-day YPG boundary. While the No-Action Alternative would not satisfy the purpose of or need for the proposed action, this alternative was retained to provide a comparative baseline against which to analyze the effects of the action alternatives.

The Draft LEIS evaluates the potential direct, indirect, and cumulative environmental and socioeconomic effects of the proposed action. The resource areas and effects analyzed in the Draft LEIS include biological resources, cultural resources, existing land use, recreation, socioeconomics, and environmental justice. The analysis includes minimization measures, standard operating procedures, and best management practices routinely employed by YPG to reduce the potential adverse effects of the proposed action.

Under the proposed action (*i.e.,* the withdrawal of BLM land for an indefinite duration), there would be less-than-significant effects on all evaluated resources. The withdrawal alternatives would result in minor adverse effects on land use and recreation, but none of the effects would be significant. The proposed action would transfer management of this land from one federal agency to another. The Army's environmental compliance requirements would be the same as those of BLM. If Congress approves the withdrawal, the Army would conduct consultation on future actions under the National Historic Preservation Act and the Endangered Species Act, as appropriate. The environmental effects of the shorter-duration withdrawal alternative would be comparable to those of the proposed action but would last for a specific period.

Federal, state, and local agencies, federally recognized Tribes, other Native American organizations, and the general public are invited to participate in the public comment process for the Draft LEIS. The public comment period begins with the publication of this notice of availability in the **Federal Register** and will last for 45 days. Comments must be received or postmarked within 45 days of publication in the **Federal Register** to be considered during the decision-making process. The Army will hold two virtual public meetings during the review period. For information about the virtual public meetings, please see the project website: *https://ypg-environmental.com/highway-95-land-withdrawal-leis.* The Army will consider all comments received on the Draft LEIS when preparing the Final LEIS.

Congress will receive the Final LEIS as part of the withdrawal case file. Congress will decide whether to authorize the requested land withdrawal and reservation.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2024–04383 Filed 2–29–24; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF EDUCATION

Applications for New Awards; School-Based Mental Health Services Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2024 for the School-Based Mental Health Services (SBMH) Grant Program, Assistance Listing Number (ALN) number 84.184H. This notice relates to the approved information collection under OMB control number 1810–0773.

DATES:

Applications Available: March 1, 2024.

Deadline for Transmittal of Applications: April 30, 2024.

Deadline for Intergovernmental Review: July 1, 2024.

Pre-Application Webinar Information: The Department will hold pre-application meetings via webinar for prospective applicants. For more information, please visit the program web page at: *https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/school-based-mental-health-services-grant-program/.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Amy Banks, U.S. Department of Education, 400 Maryland Avenue SW, 4th Floor, Washington, DC 20202–6450. Telephone: (202) 453–6704. Email: *OESE.School.Mental.Health@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The SBMH program provides competitive grants to State educational agencies (SEAs) (as defined in 20 U.S.C. 7801(30)), local educational agencies (LEAs) (as defined in 20 U.S.C. 7801(49), and consortia of LEAs to increase the number of credentialed (as defined in this document) school-based mental health services providers (as defined in 20 U.S.C. 7112(6)) providing mental health services to students in LEAs with demonstrated need (as defined in this document).

Background

Like good physical health, positive mental health promotes success in life. As defined by the Centers for Disease Control and Prevention (CDC), ''Mental health includes our emotional, psychological, and social well-being. It affects how we think, feel, and act. It also helps determine how we handle stress, relate to others, and make healthy choices. Mental health is important at every stage of life, from childhood and adolescence through adulthood.'' [1]

The increases in mental health related needs, including those resulting from traumatic events such as the COVID–19 pandemic, community violence, adverse childhood experiences, and increasing number of instances of bullying and harassment, and the impact of social media, have brought on challenges for children and youth that impact their overall emotional, psychological, and social well-being, and their ability to fully engage in learning. The disruptions in routines, relationships, and the learning environment have led to increased stress and trauma, social isolation, depression and anxiety among students.

The priorities for the FY 2024 competition described in this notice are intended to increase the number of credentialed school-based mental health services providers by providing grant funds to increase recruitment and retention-related activities and

[1] *http://www.cdc.gov/mentalhealth/learn/index.htm.*

incentives, particularly in LEAs and SEAs that have not yet benefited from an SBMH grant; promote the respecialization and professional retraining of existing mental health services providers so that they have the credentials needed to provide school-based mental health services in LEAs with demonstrated need; and increase the diversity, and cultural and linguistic competency, of school-based mental health services providers, including competency in providing culturally sustaining and asset-based services.

Note: The provision of medical services by such services providers is not an allowable use of funds under this grant.

Priorities: This competition has four absolute priorities and two competitive preference priorities. Absolute Priorities 1 and 2 and the competitive preference priorities are from the notice of final priorities, requirements, and definitions published in the **Federal Register** on October 4, 2022 (87 FR 60092) (NFP). Absolute Priorities 3 and 4 are from the Administrative Priorities for Discretionary Grants Programs (Administrative Priorities), published in the **Federal Register** on March 9, 2020 (85 FR 13640).

Absolute Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet Absolute Priority 1 and one of Absolute Priority 3 or Absolute Priority 4, or applications that meet Absolute Priority 2 and one of Absolute Priority 3 or Absolute Priority 4. Absolute Priority 1 is only applicable to SEAs. Absolute Priority 2 is only applicable to LEAs or consortia of LEAs. Absolute Priorities 3 and 4 are applicable to both SEAs and LEAs or consortia of LEAs.

The Secretary may create four funding slates for SBMH applications: one slate for applications that meet Absolute Priorities 1 and 3 (SEA applicants who are new potential grantees), a second slate for applications that meet Absolute Priorities 1 and 4 (SEA applicants who are not new potential grantees), a third slate for applications that meet Absolute Priorities 2 and 3 (LEA or a consortium of LEA applicants who are new potential grantees), and a fourth slate for applications that meet Absolute Priorities 2 and 4 (LEA or a consortium of LEA applicants who are not new potential grantees). As a result, the Secretary may fund applications out of the overall rank order.

These priorities are:

Absolute Priority 1—SEAs Proposing to Increase the Number of Credentialed School-Based Mental Health Services Providers in LEAs with Demonstrated Need.

To meet this priority, an SEA must propose to increase the number of credentialed school-based mental health services providers by implementing plans that address recruitment (as defined in this document) and retention (as defined in this document) of services providers in LEAs with demonstrated need. Applicants must propose plans that include both of the following:

(a) Recruitment. An applicant must propose a plan to increase the number of credentialed services providers serving students in LEAs with demonstrated need.

(b) Retention. An applicant must also propose a plan to increase the likelihood that credentialed services providers providing services in LEAs with demonstrated need stay in their position over time.

Absolute Priority 2—LEAs or Consortia of LEAs with Demonstrated Need Proposing to Increase the Number of Credentialed School-Based Mental Health Services Providers.

To meet this priority, an LEA or consortium of LEAs with demonstrated need must propose measures to increase the number of credentialed school-based mental health services providers, including plans to address the recruitment and retention of credentialed services providers in the LEA(s). Applicants must propose plans that include both of the following:

(a) Recruitment. An applicant must propose a plan to increase the number of credentialed services providers serving students in the LEA(s) with demonstrated need.

(b) Retention. An applicant must also propose a plan to improve the likelihood that credentialed services providers providing services in the LEA(s) with demonstrated need stay in their position over time.

Absolute Priority 3—Applications From New Potential Grantees.

Under this priority, an applicant must demonstrate the following:

(a) The applicant does not, as of the deadline date for submission of applications, have an active grant, including through membership in a group application submitted in accordance with 34 CFR 75.127–75.129, under the program from which it seeks funds.

(b) For the purpose of this priority, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Absolute Priority 4—Applications From Grantees that Are Not New Potential Grantees.

Under this priority, an applicant must demonstrate the following:

(a) The applicant has, as of the deadline date for submission of applications, an active grant, including through membership in a group application submitted in accordance with 34 CFR 75.127–75.129, under the program from which it seeks funds.

(b) For the purpose of this priority, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Competitive Preference Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional 5 points to an application from an SEA that meets Competitive Preference Priority 1. We award up to an additional 10 points to an application from an SEA, LEA, or consortium of LEAs, depending on how well the application meets Competitive Preference Priority 2.

The total number of competitive preference points an SEA applicant may compete for is 15. The total number of competitive preference points an LEA or consortium of LEAs applicant may compete for is 10. As stated previously, these entities will not be competing against one another.

An applicant must clearly identify in the project abstract and the project narrative section of its application the competitive preference priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points.

These priorities are:

Competitive Preference Priority 1—SEAs Proposing Respecialization, Professional Retraining, or Other Preparation Plan for Existing Mental Health Services Providers to Qualify Them for Work in LEAs with Demonstrated Need. (Up to 5 points)

To meet this priority, an applicant must propose a respecialization (as defined in this document), professional retraining, or other preparation plan that leads to a State credential as a school psychologist, school social worker, school counselor, or other school-based mental health services provider and that is designed to increase the number of service providers qualified to serve in LEAs with demonstrated need.

Competitive Preference Priority 2—Increasing the Number of Credentialed School-Based Mental Health Services Providers in LEAs with Demonstrated Need Who Are from Diverse Backgrounds or from Communities Served by the LEAs with Demonstrated Need. (Up to 10 Points)

To meet this priority, applicants must propose a plan to increase the number of credentialed school-based mental health services providers in LEAs with demonstrated need who are from diverse backgrounds or who are from communities served by the LEAs with demonstrated need.[2]

Applicants must describe how their proposal to increase the number of school-based mental health services providers who are from diverse backgrounds or who are from the communities served by the LEA with demonstrated need will help increase access to mental health services for students within the LEA with demonstrated need and best meet the mental health needs of the diverse populations of students to be served.

Requirements: These requirements are from the NFP. We are establishing these application and program requirements for the FY 2024 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition. Application requirement (a) applies to SEAs only, and application requirement (b) applies to LEAs or a consortium of LEAs only. All of the remaining application requirements apply to all eligible applicants. For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following requirements apply:

Eligible Applicants: SEAs, as defined in 20 U.S.C. 7801(49), or LEAs, as defined in 20 U.S.C. 7801(30), including consortia of LEAs.

Program Requirements

(a) Applicants that receive an award under this program must ensure that any school-based mental health services provider hired under this grant, including any services provider that offers telehealth services, is credentialed by the State to work in an elementary school (as defined in 20 U.S.C. 7801(19)) or secondary school (as defined in 20 U.S.C. 7801(45)).

(b) Applicants that receive an award under this program must ensure that any school-based mental health services provider offering services (including telehealth services) does so in an equitable manner and consistent with the Family Educational Rights and Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), the Individuals with Disabilities Education Act (IDEA), section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, as well as all other applicable Federal, State, and local laws and profession-specific ethical obligations.

Application Requirements

(a) *Describe the LEAs with demonstrated need designated by the SEA to be served by the proposed project.*

SEA applicants must describe the LEAs with demonstrated need designated to benefit from the SBMH program.

(b) *Describe how the LEA, or each LEA in the proposed consortium (if applicable), meets the definition of an LEA with demonstrated need.*

To meet this requirement, an LEA applicant or the lead LEA submitting an application on behalf of a consortium must describe how the LEA or each LEA in the consortium meets the definition of an LEA with demonstrated need.

(c) Describe the importance and magnitude of the problem.

Applicants must describe the lack of school-based mental health services providers and its effect on students in the LEA(s) to be served by the grant. This must include a description of the nature of the problem for the LEA(s), based on information, including, but not limited to, the most recent available ratios of school-based mental health services providers to students enrolled in the LEA(s), or for SEA applicants, the LEAs designated by the SEA to benefit from the SBMH program. These data must be provided in the aggregate and disaggregated by profession (*e.g.,* school social workers, school psychologists, school counselors) as compared to local, State, or national data. The description may also include LEA-level or school-level demographic data (including rates of poverty; rates of chronic absenteeism; the percentage of students involved in the juvenile justice system, experiencing homelessness, or in foster care; and discipline data), school climate surveys, school violence/crime data, data related to suicide rates, and descriptions of barriers to hiring and retaining credentialed school-based mental health services providers in the LEA.

(d) *Logic Model*

The applicant must describe its approach to increase the number of credentialed school-based mental health services providers using a logic model (as defined in 34 CFR 77.1), including the key project components and relevant outcomes (as defined in 34 CFR 77.1). The description should indicate how the proposed approach taken under this program will improve or expand on any previous approaches, how the new approach will address barriers, and how the applicant will sustain the increased number of school-based mental health services providers after the performance period has ended.

(e) *Detailed project budget, including matching funds.*

To promote the sustainability of the school-based mental health services, all applicants must include non-Federal matching funds in the amount of at least 25 percent of their budgets. Budgets must describe how the applicant will meet the matching requirement for each budget period awarded under this grant and must indicate the source of the funds, such as State, local, or private resources. The Secretary may consider decreasing or waiving the matching requirement post award, on a case-by-case basis, if an applicant demonstrates a significant financial hardship.

Budgets must also specify the portion of funds that will be used for respecialization, if applicable. Administrative costs for SEA applicants may not exceed 10 percent of the annual grant award. This includes funding for State-level or LEA-level administrative costs that promote respecialization, if applicable. Administrative costs for applicants that are LEAs and consortia of LEAs may not exceed 5 percent of the annual grant award.

(f) *Number of providers.*

Applicants must include the most recent available data on the number of school-based mental health services providers in the identified LEA(s), disaggregated by profession (*e.g.,* school social workers, school psychologists, school counselors), and the projected number of school-based mental health services providers that will be placed into employment in the identified LEA(s) for each year of the plan using funds from this grant or matching funds. If applicable, applicants should provide data on the current and projected unduplicated numbers of school-based mental health services providers disaggregated by profession (*e.g.,* school social workers, school psychologists, school counselors), offering telehealth services.

(g) *A plan for collaboration and coordination with related Federal, State, and local organizations, and school-based efforts.*

Applicants must propose a plan describing how they will collaborate

[2] All strategies to increase the diversity of school-based mental health services providers must comply with applicable Federal civil rights laws, including title VI of the Civil Rights Act of 1964.

and coordinate with related Federal, State, and local organizations, and school-based efforts (*e.g.,* professional associations; colleges or universities, including Historically Black Colleges and Universities, Minority Serving Institutions, and Tribal Colleges and Universities; local mental health, public health, child welfare, or other community agencies, including school-based health centers), to achieve plan goals and objectives of increasing the number of school-based mental health services providers in LEAs with demonstrated need. The plan must include a description of how such collaboration and coordination will promote program success across multiple programs.

(h) *Use of grant funds to supplement, and not supplant, existing school-based mental health services funds and to expand, not duplicate, efforts to increase the number of providers.*

Applicants must describe how project funds will supplement, and not supplant, non-Federal funds that would otherwise be available for activities funded under this program.

Applicants must describe how they will use the SBMH program funds to expand, rather than duplicate, existing or new efforts to increase the number of credentialed school-based mental health services providers in LEAs with demonstrated need and how they will integrate existing funding streams and efforts to support the plan.

(i) *Plan for prompt delivery of services to students.*

For SEA applicants, applicants must describe their plan to ensure the prompt delivery of services to students (*i.e.,* as soon as possible, but no later than 180 days from award), including via subgrants to LEAs, as appropriate. For LEA applicants and consortia of LEAs, applicants must describe their plan to ensure the prompt delivery of services to students (*i.e.,* as soon as possible, but no later than 180 days from award). Additionally, SEA and LEA applicants must describe how leaders across all levels of the project will be engaged in the implementation and evaluation of the project.

Definitions

The definitions of ''credentialed,'' ''LEA with demonstrated need,'' ''recruitment,'' ''respecialization,'' ''retention,'' and ''telehealth'' are from the NFP. The definitions of ''ambitious,'' ''baseline,'' ''logic model,'' ''project component,'' and ''relevant outcome'' are from 34 CFR 77.1, and the definitions of ''local educational agency'' and ''State educational agency'' are from 20 U.S.C. 7801. The definition of ''school-based mental health services provider'' is from 20 U.S.C. 7112.

These definitions apply to the FY 2024 School-Based Mental Health Services Grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure.

Baseline means the starting point from which performance is measured and targets are set.

Credentialed means an individual who possesses a valid license or certificate from the SEA or relevant regulatory body as a school psychologist, school counselor, or a school social worker, or other mental health services provider, approved by the State to provide school-based mental health services.

Local educational agency means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(1) The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(2) The term includes an elementary or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Elementary and Secondary Education Act of 1965, as amended (ESEA) with the smallest student population, except that the school shall not be subject to the jurisdiction of any SEA other than the Bureau of Indian Education.

(3) The term includes educational service agencies and consortia of those agencies.

(4) The term includes the SEA in a State in which the SEA is the sole educational agency for all public schools.

LEA with demonstrated need means an LEA that has a significant need for additional school-based mental health services providers based on—

(1) High student to mental health services provider ratios as compared to other LEAs statewide or nationally;

(2) High rates of community violence (including hate crimes), poverty, substance use (including opioid use), suicide, or trafficking; or

(3) A significant number of students who are migratory, experiencing homelessness, have a family member deployed in the military or with a military-service connected disability (including veterans), have experienced a natural or man-made disaster or a traumatic event, or have other adverse childhood experiences, such as repeated disciplinary exclusions from the learning environment.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Recruitment means strategies that help attract and hire credentialed school-based mental health services providers, including by doing at least one of the following:

(1) Providing an annual salary or stipend for school-based mental health services providers who maintain an active national certification.

(2) Providing payment toward the school loans accrued by the school-based mental health services provider.

(3) Creating pathways to grant cross-State credentialing reciprocity for school-based mental health services providers.

(4) Providing incentives and supports to help mitigate shortages. These may include, for example, increasing pay; offering monetary incentives for relocation to high-need areas; providing

services via telehealth; creating hybrid roles that allow for leadership, academic, or research opportunities; developing induction programs; developing paid internship programs; focusing on recruitment and support of underrepresented populations; and offering service scholarship programs such as those that provide grants in exchange for a commitment to serve in the LEA for a minimum number of years.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Respecialization means strategies that provide opportunities for professional retraining and alternative pathways to obtain a State credential, aligned with the standards of the relevant professional organization, as a school-based mental health services provider for individuals who hold, at a minimum, a degree in a related field (*e.g.,* special education, clinical psychology, community counseling), including by doing one or more of the following:

(1) Revising, updating, or streamlining requirements for such individuals so that additional training or other requirements focus only on training needed to obtain a credential as a school-based mental health services provider.

(2) Providing a stipend or making a payment to support the training needed to obtain a credential as a school- based mental health services provider.

(3) Offering flexible options for completing training that leads such professionals to meet State credentialing requirements as a school-based mental health services provider.

(4) Establishing a provisional, time-limited, and nonrenewable credential to allow individuals seeking respecialization to provide school-based mental health services under the direct supervision of a fully credentialed school-based mental health services provider of the same profession.

(5) Offering other meaningful activities that result in existing mental health services providers obtaining a State credential as a school-based mental health services provider.

Retention means strategies to help ensure that credentialed individuals stay in their position to avoid gaps in service and unfilled positions, including by—

(1) Providing opportunities for advancement or leadership, such as career pathways programs, recognition and award programs, and mentorship programs; and

(2) Offering incentives and supports to help mitigate shortages. These may include, for example, increasing pay; making payments toward student loans; offering monetary incentives for relocation to high-need areas; providing services via telehealth; offering service scholarship programs, such as those that provide grants in exchange for a commitment to serve in the LEA for a minimum number of years; and developing paid internship programs.

School-based mental health services provider means a State-licensed or State-certified school counselor, school psychologist, school social worker, or other State-licensed or certified mental health professional qualified under State law to provide mental health services to children and adolescents.

State educational agency means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Telehealth means the use of electronic information and telecommunication technologies to support and promote long- distance clinical health care, patient and professional health-related education, public health, and health administration. Technologies include videoconferencing, the internet, store-and-forward imaging, streaming media, and landline and wireless communications.

Program Authority: 20 U.S.C. 7281.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The NFP.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $19,000,000.

The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $500,000 to 3,000,000.

Estimated Average Size of Awards: $1,750,000.

Estimated Number of Awards: 15–25 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs, as defined in 20 U.S.C. 7801(49), or LEAs, as defined in 20 U.S.C. 7801(30), including consortia of LEAs.

2. *Cost Sharing or Matching:* a. This program requires cost sharing or matching requirements. See ''Application Requirements'' in Section I.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program involves administrative costs for SEAs, LEAs and consortia of LEAs. See ''Application Requirements'' in Section I.

3. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. See ''Application Requirements'' in Section I.

4. *Limitation on Awards:* The Department will make only one award that serves any individual LEA.

5. *Subgrantees:* Under 34 CFR 75.708(b) and (c) an SEA grantee under this competition may award subgrants to directly carry out project activities described in its application to the following types of entities: LEAs. The SEA grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantees. However, an SEA grantee is not required to award subgrants and may instead administer the program directly. Additionally, under 34 CFR 75.708 (b) and (c) LEAs are not authorized to make subgrants.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education

Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice. In addition, we remind applicants that sections 4001(a) and 4001(b) of the ESEA (20 U.S.C. 7101) apply to this program. Section 4001(a) requires entities receiving funds under this program to obtain prior, written, informed consent from the parent of each child who is under 18 years of age to participate in any mental-health assessment or service that is funded under this program and conducted in connection with an elementary or secondary school. Section 4001(b) prohibits the use of funds for medical services or drug treatment or rehabilitation, except for integrated student supports, specialized instructional support services, or referral to treatment for impacted students, which may include students who are victims of, or witnesses to, crime or who illegally use drugs. This prohibition does not preclude the use of funds to support mental health counseling and support services, including those provided by a mental health services provider outside of school, so long as such services are not medical.

Recommended Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 25 pages and (2) use the following standards:

A ''page'' is 8.5″ x 11″, on one side only, with 1′ margins at the top, bottom, and both sides.

Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. The maximum score for all selection criteria is 100 points. The points assigned to each criterion are indicated in parentheses. Non-Federal peer reviewers will evaluate and score each application program narrative against the following selection criteria:

(a) *Need for the Project* (10 points).

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (Up to 10 points)

(b) *Quality of Project Personnel* (30 points).

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (Up to 15 points)

In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel. (Up to 15 points)

Note: For purposes of this competition, key project personnel include school-based mental health providers hired as consultants or subcontractors.

(c) *Quality of Project Design and Project Services* (35 points).

(1) The Secretary considers the quality of the design of the proposed project and the quality of the services to be provided by the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (Up to 10 points)

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (Up to 10 points)

(3) In addition, the Secretary considers the extent to which the training or professional development services to be provided by the proposed project are likely to alleviate the personnel shortages that have been identified or are the focus of the proposed project. (Up to 15 points)

(d) *Management Plan and Adequacy of Resources* (25 points).

The Secretary considers the management plan and adequacy of resources for the proposed project. In determining the quality of the management plan and the adequacy of resources for the proposed project, the Secretary considers:

(1) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (Up to 10 points)

(2) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (Up to 5 points)

(3) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support. (Up to 5 points)

(4) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (Up to 5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the Applicable Regulations section of this notice.

We reference the regulations outlining the terms and conditions of an award in the Applicable Regulations section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works.

Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under this competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, we have established the following performance measures for the School-Based Mental Health Services Grant Program:

(a) The unduplicated, cumulative number of new school-based mental health services providers hired for each LEA with demonstrated need as a result of the grant.

(b) The unduplicated, cumulative number of school- based mental health services providers retained in LEAs with demonstrated need as a result of the grant.

(c) The ratio of students to school-based mental health services providers for each LEA with demonstrated need served by the grant, and the numbers of school-based mental health services providers and students used to calculate the ratio.

(d) The attrition rate of school-based mental health services providers for each LEA with a demonstrated need that is participating in the grant.

(e) The total number of students who received school-based mental health services as a result of the grant.

(f) For grantees that addressed Competitive Preference Priority 2, the number of such grantees that met their goal of increasing the diversity of

school-based mental health services providers.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach for its proposed project plan. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures. These data will be considered by the Department in making potential continuation awards.

Consistent with 34 CFR 75.591, grantees funded under this program must meet the requirements of any evaluation of the program conducted by the Department or an evaluator selected by the Department.

Performance measure targets: The applicant must propose annual targets for the measures listed above in their application. Applicants must also provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) An explanation of how each proposed performance target is ambitious (as defined in this notice) yet achievable compared to the baseline (as defined in this notice) for the performance measure.

(2) An explanation of the data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data.

(3) An explanation of the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Note: If the applicant does not have experience with collection and reporting of performance data through other projects or research, the applicant should provide other evidence of capacity to successfully carry out data collection and reporting for its proposed project.

The reviewers of each application will score related selection criteria on the basis of how well an applicant has considered these measures in conceptualizing the approach and evaluation of the project.

All grantees must submit an annual performance report and final performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary Office of Elementary and Secondary Education.

[FR Doc. 2024–04358 Filed 2–29–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Mental Health Service Professional Demonstration Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2024 for the Mental Health Service Professional (MHSP) Demonstration Grant Program, Assistance Listing Number 84.184X. This notice relates to the approved information collection under OMB control number 1810–0772.

DATES:

Applications Available: March 1, 2024.

Deadline for Transmittal of Applications: May 15, 2024.

Deadline for Intergovernmental Review: July 15, 2024.

Pre-Application Webinar Information: The Department will hold a pre-application meeting via webinar for prospective applicants on TBD, at 1:00 p.m. and TBD at 1:00 p.m. Eastern Time. To register, please visit the program website at: *https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/mental-health-service-professional-demonstration-grant-program/.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Nicole White, U.S. Department of Education, 400 Maryland Avenue, 4th Floor, Washington, DC 20202–6450. Telephone: (202) 453–6729. Email: *Mental.Health@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The MHSP Program provides competitive grants to support and demonstrate innovative

partnerships to train school-based mental health services providers (as defined in section 4102 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) (services providers) for employment in schools and local educational agencies (LEAs). The goal of this program is to increase the number and diversity of high-quality, trained providers available to address the shortages of mental health services professionals in schools served by high-need LEAs (as defined in this notice). The partnerships must include (1) one or more high-need LEAs or a State educational agency (SEA) on behalf of one or more high-need LEAs and (2) one or more eligible institutions of higher education (eligible IHE) (as defined in this notice).

Partnerships must provide opportunities to place postsecondary education graduate students in school-based mental health fields into high-need schools (as defined in this notice) served by the participating high-need LEAs to complete required field work, credit hours, internships, or related training, as applicable, for the degree or credential program of each student. In addition to the placement of graduate students, grantees may also develop mental health career pathways as early as secondary school, through career and technical education opportunities, or through paraprofessional support degree programs at local community or technical colleges.

Background:

Like good physical health, positive mental health promotes success in life. As defined by the Centers for Disease Control and Prevention (CDC), ''Mental health includes our emotional, psychological, and social well-being. It affects how we think, feel, and act. It also helps determine how we handle stress, relate to others, and make healthy choices. Mental health is important at every stage of life, from childhood and adolescence through adulthood.'' [1]

Support for the mental health of children and youth advances educational opportunities by helping to create conditions for students to fully engage in learning. The increases in mental health related needs, including those resulting from traumatic events such as the COVID–19 pandemic, community violence, adverse childhood experiences, the impact of social media, and more present challenges for children and youth that for many impact their overall emotional, psychological, and social well-being and their ability to fully engage in learning.

The priorities, requirements, and definitions used in this notice aim to address student mental health needs by training more school-based mental health services providers who will be available to work in high-need LEAs. While the complementary K–12 mental health program, the School-Based Mental Health Services Program (SBMH), focuses on the immediate need of hiring more school-based mental health services providers, the MHSP program is designed to increase the overall number of services providers prepared to enter the workforce. Additionally, we aim to make more awards to eligible applicants who have not yet benefited from an MHSP grant, to increase the number of services providers from diverse backgrounds or from the school communities they will serve, and to ensure that all services providers are trained in inclusive practices, including ensuring access to services for children and youth who are English learners.

In developing applications that meet the absolute priorities, we encourage applicants to consider the needs of individuals from diverse backgrounds and utilize the program's broad allowability to use funds to provide support services that will have a meaningful impact on diversifying the school-based mental health services workforce. For example, projects may pay for participants' tuition, provide a modest salary for internships, cover the cost of transportation to and from the high-need school where the participant is placed, pay for childcare while the participant is working at the high-need school, and pay for administrative expenses, such as background check fees that are necessary for placement in a participating school. Such uses of funds may be especially critical in supporting individuals from low-income backgrounds who are pursuing careers as school-based mental health services providers.

Priorities: This competition has three absolute priorities and three competitive preference priorities. Absolute Priority 1 and the competitive preference priorities are from the notice of final priorities, requirements, and definitions for the MHSP Program published in the **Federal Register** on October 4, 2022 (87 FR 60083) (the NFP). Absolute Priority 2 and Absolute Priority 3 are from the Administrative Priorities for Discretionary Grants Programs (Administrative Priorities), published in the **Federal Register** on March 9, 2020 (85 FR 13640).

Absolute Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet Absolute Priority 1 and Absolute Priority 2 or Absolute Priority 3.

The Secretary intends to create two funding slates for MHSP applications, one slate for applications that meet Absolute Priority 1 and Absolute Priority 2 and a second slate for applications that meet Absolute Priority 1 and 3. As a result, the Secretary may fund applications out of the overall rank order.

These priorities are:

Absolute Priority 1—Expand Capacity of High-need LEAs.

Projects that propose to expand the capacity of high-need LEAs in partnership with eligible IHEs to train school-based mental health services providers (as defined in this notice), with the goal of expanding the number of these professionals available to address the shortages of school-based mental health services providers in high-need schools.

To meet this priority, the applicant must propose a school-based mental health partnership (as defined in this notice) to place the IHE's graduate students in school-based mental health services fields into high-need schools served by the participating high-need LEAs for the purpose of completing required field work, credit hours, internships, or related training necessary to complete their degree or obtain a credential as a school-based mental health services provider.

Absolute Priority 2—Applications From New Potential Grantees.

Under this priority, an applicant must demonstrate the following:

(a) The applicant does not, as of the deadline date for submission of applications, have an active grant, including through membership in a group application submitted in accordance with 34 CFR 75.127–75.129, under the program from which it seeks funds.

(b) For the purpose of this priority, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Absolute Priority 3—Applications from Grantees that Are Not New Potential Grantees.

Under this priority, an applicant must demonstrate the following:

(a) The applicant has, as of the deadline date for submission of

[1] Centers for Disease Control and Prevention. *www.cdc.gov/mentalhealth/learn/index.htm.* Accessed on February 12, 2024.

applications, an active grant, including through membership in a group application submitted in accordance with 34 CFR 75.127–75.129, under the program from which it seeks funds.

(b) For the purpose of this priority, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Competitive Preference Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 5 points for Competitive Preference Priority 1, depending on how well the application meets the priority. We award up to an additional 5 points for Competitive Preference Priority 2, depending on how well the application meets the priority. We award an additional 5 points to an application that meets Competitive Preference Priority 3. The total number of competitive preference points an applicant may receive is 15.

An applicant must clearly identify in the project abstract and the project narrative section of its application the competitive preference priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points.

These priorities are:

Competitive Preference Priority 1- Increase the Number of Qualified School Based Mental Health Services Providers in High-Need LEAs Who Are from Diverse Backgrounds or from Communities Served by the High-Need LEAs. (Up to 5 points)

Projects that propose to increase the number of qualified school-based mental health services providers in high-need LEAs who are from diverse backgrounds (*i.e.,* backgrounds that reflect the communities, identities, races, ethnicities, abilities, and cultures of the students in the high-need LEA, including underserved students) or who are from communities served by the high-need LEAs.[2]

Applicants must describe how their proposal to increase the number of school-based mental health services providers who are from diverse backgrounds or who are from the communities served by the high-need LEA will help increase access to mental health services for students within the high-need LEA and best meet the mental health needs of the diverse populations of students to be served.

Competitive Preference Priority 2– Promote Inclusive Practices. (Up to 5 points)

Projects that propose to provide evidence-based (as defined in this notice) pedagogical practices in mental health services provider preparation programs or professional development programs that are inclusive with regard to race, ethnicity, culture, language, disability, and for students who identify as LGBTQI+, and that prepare school-based mental health services providers to create culturally and linguistically inclusive and identity-safe[3] environments for students when providing services.

Applicants must describe how their proposal to provide evidence-based pedagogical practices in mental health services provider preparation programs or professional development programs will prepare school-based mental health services providers to provide inclusive practices and to create culturally and linguistically inclusive and identity-safe environments for students when providing services.

Competitive Preference Priority 3- Partnerships with HBCUs, TCUs, or other MSIs. (0 or 5 points)

Applicants that propose to implement their projects by or in partnership with one or more of the following entities:

(1) Historically Black Colleges and Universities (HBCUs) (as defined in 34 CFR 608.2).

(2) Tribal Colleges and Universities (TCUs) (as defined in section 316(b)(3) of the HEA).

(3) Minority-Serving Institutions (MSIs) (as defined in sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA).

Note: Only institutions that the Department determined to be eligible through the FY 2024 process for eligible MSI designation (which includes HBCU and TCU designations), or which were granted a waiver under the process, may be considered eligible for this competitive preference priority.

Requirements: These application requirements are from the NFP. These requirements are:

Program Requirement: Eligible applicants for this program are high-need LEAs, SEAs on behalf of one or more high-need LEAs, and IHEs. High-need LEA applicants and SEA applicants on behalf of one or more high-need LEAs must propose to work in partnership with an eligible IHE, which may include institutions that serve diverse learners such as an HBCU (as defined in 34 CFR 608.2), TCU (as defined in section 316(b)(3) of the HEA), or other MSI (as defined in sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA). Eligible IHE applicants must propose to work in partnership with one or more high-need LEAs or an SEA.

Application Requirements: An applicant must include the following in its application:

(a) *Identification of schools to be served by the proposed project.*

Applicants must identify or describe how they will identify the high-need schools to be served in each high-need LEA that is part of the school-based mental health partnership.

(b) *A description of the nature and magnitude of the problem.*

Applicants must describe how the lack of school-based mental health services providers is specifically affecting students in the high-need schools to be served by project activities. Applicants must describe the nature of the problem for the LEA, based on, but not limited to, the most recent available ratios of school-based mental health services providers to students enrolled in the schools in each high-need LEA that is part of the school-based mental health partnership (in the aggregate and disaggregated by profession (*e.g.,* school social workers, school psychologists, and school counselors)). The description may also include LEA and school-level demographic data, including chronic absenteeism and discipline data, school climate surveys, school violence/crime data, data related to suicide rates, and descriptions of barriers to hiring and retaining services providers in the LEA.

(c) *A plan to enhance LEA capacity to provide mental health services to students.*

Applicants must describe the specific activities they will conduct to expand and improve LEA capacity to provide mental health services to students in high-need LEAs and ensure that students receive appropriate, evidence-based, and culturally and linguistically inclusive mental health services. To meet this requirement, the applicant must propose a school-based mental health partnership established for the purpose of placing the IHE's graduate students in school-based mental health fields into high-need schools served by the participating high-need LEAs to complete required field work, credit

[2] All strategies to increase the diversity of providers must comply with applicable Federal civil rights laws, including title VI of the Civil Rights Act of 1964.

[3] An identity-safe environment is a place where every student feels physically and emotionally safe. Perceptions of safety often differ across different groups of students, and each intervention and support measure should be designed to ensure the safety and belonging of all students.

hours, internships, or related training as applicable for the degree or credential program of each student. If the applicant intends to establish a program that directly benefits an individual graduate student, such as through a stipend or tuition credit, the applicant must describe its approach to implementing a service obligation for such graduate student as a school-based mental health services provider in a high-need LEA commensurate with the level of support the graduate student receives.

(d) *A memorandum of understanding (MOU), a memorandum of agreement (MOA), or letter of agreement between the LEA or SEA, and the IHE.*

Applicants must include with their application an MOU, MOA, or letter of agreement that is signed by the authorized representatives of the LEA or SEA, and the IHE. The MOU, MOA, or letter of agreement must provide details regarding the roles and responsibilities of each entity in the partnership and include a description of how the partnership will place graduate students into high-need schools served by the participating high-need LEAs to complete required field work, credit hours, internships, or related training necessary to complete their degree or obtain a credential as a school-based mental health services provider. Additionally, SEA and LEA applicants must describe in the MOU, MOA, or letter of agreement how leaders across all levels of the project will be engaged in the implementation and evaluation of the project. The MOU, MOA, or letter of agreement must also include the estimated number of mental health services providers that will be placed into employment in high-need schools and high-need LEAs on an annual basis.

(e) *A plan for collaboration and coordination with related Federal, State, and local initiatives.*

Applicants must propose a plan that describes:

(1) The activities to be carried out in coordination with the national, State, or local mental health, public health, child welfare, and other community agencies, which may include school-based health centers, to achieve the plan goals and objectives of establishing a pipeline program to train and expand the capacity of school-based mental health services providers in high-need LEAs; and

(2) How they will leverage other available Federal, State, and local resources to achieve project goals and objectives and sustain investments beyond the budget period. Applicants must identify these other available resources and describe how they will be used to promote success across programs.

Evidence of collaboration and coordination described in paragraph (e)(1) must be provided through letters of support or MOAs/MOUs from State or local organizations or agencies, where applicable.

(f) *A description of the process to identify students for mental health services.*

Applicants must describe the specific process and activities they will use to ensure students in high-need LEAs who need school-based mental health services are properly identified, assessed, and provided the appropriate school-based mental health services by qualified personnel in consultation with educators, including school leaders, and parents and families, as appropriate. To meet this requirement, applicants must also describe how they will ensure that services are evidence-based and inclusive with regard to race, ethnicity, culture, language, disability, homelessness, and for students who identify as LGBTQI+, and are accessible to all. Further, applicants must describe how LEAs will engage parents and families for the purposes of raising awareness about the availability of services and connecting students to services.

Definitions: The definitions of ''eligible institution of higher education,'' ''high-need LEA,'' ''high-need school,'' ''school-based mental health partnership,'' and ''students/children from low-income backgrounds'' are from the NFP. The definitions of ''evidence-based'' (20 U.S.C. 7801(21), ''institution of higher education'' (20 U.S.C. 7801(29), ''local educational agency'' (20 U.S.C. 7801(30)), ''State educational agency'' (20 U.S.C. 7801(49)), and ''school-based mental health services provider'' (20 U.S.C. 7112(6)) are from the Elementary and Secondary Education Act of 1965, as amended (ESEA). The definitions of ''ambitious,'' ''baseline,'' ''demonstrates a rationale,'' ''logic model,'' ''project component,'' and ''relevant outcome'' are from 34 CFR 77.1. These definitions apply to the FY 2024 MHSP Program competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

These definitions are:

Ambitious means promoting continued meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure.

Baseline means the starting point from which performance is measured and targets are set.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Eligible institution of higher education means an institution of higher education that offers a program of study that leads to a master's degree or other graduate degree—

(a) In school psychology that prepares students in such program for a State credential as a school psychologist;

(b) In school counseling that prepares students in such program for a State credential in school counseling;

(c) In school social work that prepares students in such program for a State credential in school social work;

(d) In another school-based mental health field that prepares students in such program for a State credential to deliver school-based mental health services; or

(e) In any combination of study described in paragraphs (a) through (d).

Evidence-based, when used with respect to a State, local educational agency, or school activity, means an activity, strategy, or intervention that—(a) demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—(i) strong evidence from at least 1 well-designed and well-implemented experimental study; (ii) moderate evidence from at least 1 well-designed and well-implemented quasi-experimental study; or (iii) promising evidence from at least 1 well-designed and well-implemented correlational study with statistical controls for selection bias; or (b)(i) demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and (ii) includes ongoing efforts to examine the effects of such activity, strategy, or intervention.

High-need local educational agency (LEA) means an LEA—

(a)(1) For which at least 20 percent of the children served by the agency are children from low-income backgrounds;

(2) That serves at least 10,000 children from low-income backgrounds;

(3) That meets the eligibility requirements for funding under the Small, Rural School Achievement

(SRSA) program under section 5211(b) of the ESEA; or

(4) That meets the eligibility requirements for funding under the Rural and Low-Income School (RLIS) program under section 5221(b) of the ESEA; and—

(b) For which there is a high student to qualified mental health services provider ratio as compared to other LEAs statewide or nationally.

High-need school means a school that, based on the most recent data available, meets at least one of the following:

(a) The school is in the highest quartile of all schools served by an LEA ranked in descending order by percentage of students from low-income backgrounds enrolled in such schools, as determined by the LEA based on one of the following measures of poverty:

(1) The percentage of students aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary.

(2) The percentage of students eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act based on the most recently available data.

(3) The percentage of students in families receiving assistance under the State program funded under part A of title IV of the Social Security Act.

(4) The percentage of students eligible to receive medical assistance under the Medicaid program.

(5) A composite of two or more of the measures described in paragraphs (a)(1) through (4).

(b) In the case of—

(1) An elementary school, the school serves students not less than 60 percent of whom are eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act based on the most recently available data; or

(2) Any other school that is not an elementary school, the other school serves students not less than 45 percent of whom are eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act based on the most recently available data.

Institution of higher education has the meaning given to such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001).

Local educational agency means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Education.

(d) The term includes educational service agencies and consortia of those agencies.

(e) The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

School-based mental health partnership means the formal relationship, established for the purpose of training school-based mental health services providers for employment in schools and LEAs, between—

(a) One or more high-need LEAs or an SEA on behalf of one or more high-need LEAs; and

(b) One or more eligible IHEs, including HBCUs (as defined in 34 CFR 608.2), MSIs (as defined in sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA), and TCUs (as defined in section 316(b)(3) of the HEA).

School-based mental health services provider means a State-licensed or State-certified school counselor, school psychologist, school social worker, or other State licensed or certified mental health professional qualified under State law to provide mental health services to children and adolescents.

Students/children from low-income backgrounds means students whose families meet any of the poverty thresholds established in section 1113 of the ESEA for the relevant grade level.

State educational agency means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Program Authority: Section 4631(a)(1)(B) of the ESEA (20 U.S.C. 7281).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The NFP. (e) The Administrative Priorities.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $19,000,000.

The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $400,000 to $1,000,000.

Estimated Average Size of Awards: $700,000 for each 12-month period.

Estimated Number of Awards: Between 23–33 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* High-need LEAs, SEAs on behalf of one or more high-need LEAs, and IHEs. High-need LEA applicants and SEA applicants on behalf of one or more high-need LEAs must propose to work in partnership with an eligible IHE, which may include institutions that serve diverse learners such as an HBCU (as defined in 34 CFR 608.2), TCU (as defined in section 316(b)(3) of the HEA), or other MSI (as defined in sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA). Eligible IHE applicants must propose to work in partnership with one or more high-need LEAs or a SEA.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Limitation on Awards:* The Department will make only one award that serves any individual LEA.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 7, 2021.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice. In addition, we remind applicants that sections 4001(a) and 4001(b) of the ESEA (20 U.S.C. 7101) apply to this program. Section 4001(a) requires entities receiving funds under title IV of the ESEA to obtain prior, written, informed consent from the parent of each child who is under 18 years of age to participate in any mental-health assessment or service that is funded under title IV of the ESEA and conducted in connection with an elementary or secondary school. Section 4001(b) prohibits the use of funds for medical services or drug treatment or rehabilitation, except for integrated student supports, specialized instructional support services, or referral to treatment for impacted students, which may include students who are victims of, or witnesses to, crime or who illegally use drugs. This prohibition does not preclude the use of funds to support mental health counseling and support services, including those provided by a mental health services provider outside of school, so long as such services are not medical.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. The maximum score for all selection criteria is 100 points. The points assigned to each criterion are indicated in parentheses. Non-Federal peer reviewers will evaluate and score each application program narrative against the following selection criteria:

(a) *Need for the Project and Significance* (Up to 15 points)

(1) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (Up to 10 points)

(2) The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population. (Up to 5 points)

(b) *Quality of the project design* (Up to 25 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives. (Up to 15 points)

(ii) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (Up to 5 points)

(iii) The extent to which the proposed project demonstrates a rationale (as defined in 34 CFR 77.1(c)). (Up to 5 points)

(c) *Quality of project services* (Up to 30 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (Up to 15 points)

(3) In addition, the Secretary considers the extent to which the training or professional development services to be provided by the proposed project are likely to alleviate the personnel shortages that have been identified or are the focus of the proposed project. (Up to 15 points)

(d) *Management Plan and Adequacy of Resources* (Up to 20 points).

(1) The Secretary considers the management plan and the adequacy of resources for the proposed project.

(2) In determining the quality of the management plan and the adequacy of resources for the proposed project, the Secretary considers:

(i) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (Up to 10 points)

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (Up to 10 points)

(e) *Quality of the project evaluation* (Up to 10 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (Up to 5 points)

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (Up to 5 points)

2. *Review and Selection Process:* We remind potential applicants that, in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on

reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The Department has established the following performance measures for Department reporting under 34 CFR 75.110 for the Mental Health Service Professional Demonstration Grant Program:

(a) The unduplicated, cumulative number of school-based mental health services providers trained by the grantee under the project to provide school-based mental health services in high-need LEAs.

(b) The unduplicated, cumulative number of school-based mental health services providers placed in a practicum or internship by the grantee in high-need LEAs to provide school-based mental health services.

(c) The unduplicated, cumulative number of school-based mental health services providers hired by high-need LEAs to provide school-based mental health services.

(d) For grantees that addressed Competitive Preference Priority 1, the number of such grantees that met their goal of increasing the diversity of school-based mental health services providers.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures. This data will be considered by the Department in making potential continuation awards.

Consistent with 34 CFR 75.591, grantees funded under this program shall cooperate in any evaluation of the program conducted by the Department or an evaluator selected by the Department.

Performance measure targets: The applicant must propose annual targets for the measures listed above in their application. Applications must also provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) An explanation of how each proposed performance target is ambitious (as defined in this notice) yet achievable compared to the baseline (as defined in this notice) for the performance measure.

(2) An explanation of the data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and

(3) An explanation of the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Note: If the applicant does not have experience with the collection and reporting of performance data through other projects or research, the applicant should provide other evidence of capacity to successfully carry out data collection and reporting for its proposed project.

The reviewers of each application will score related selection criteria on the basis of how well an applicant has considered these measures in conceptualizing the approach and evaluation of the project.

All grantees must submit an annual performance report and final performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2024–04356 Filed 2–29–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities Program—Stepping-Up Technology Implementation

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2024 for Stepping-up Technology Implementation, Assistance Listing Number 84.327S. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications Available: March 1, 2024.

Deadline for Transmittal of Applications: April 30, 2024.

Deadline for Intergovernmental Review: July 1, 2024.

Pre-Application Webinar Information: No later than March 6, 2024, the Office of Special Education Programs and Rehabilitative Services will post details on pre-recorded informational webinars designed to provide technical assistance to interested applicants. Links to the webinars may be found at *https://www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Anita Vermeer, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 987–0155. Email: *anita.vermeer@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Educational Technology, Media, and Materials for Individuals with Disabilities Program (ETechM2 Program) is to improve results for children with disabilities by (1) promoting the development, demonstration, and use of technology; (2) supporting educational activities designed to be of educational value in the classroom for children with disabilities; (3) providing support for captioning and video description that is appropriate for use in the classroom; and (4) providing accessible educational materials to children with disabilities in a timely manner.[1]

Priorities: This competition includes one absolute priority and one competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(v), the absolute priority is from allowable activities specified in sections 674(b)(2) and 681(d) of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1474(b)(2) and 1481(d). The competitive preference priority is from the Secretary's Administrative Priorities for Discretionary Grant Programs published in the **Federal Register** on March 9, 2020 (85 FR 13640) (Administrative Priorities).

Absolute Priority: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Use of Artificial Intelligence (AI)[2] to Meet Individual Needs of Students with Disabilities Through Learning and Assessment.

Background

The evolution and recent developments in educational technology tools integrating AI have generated increased interest in the potential of AI to transform and support innovations in learning across educational settings for all learners, including learners with disabilities. As part of the Administration's comprehensive strategy related to responsible innovation afforded by AI, the Department (2023) released a report that summarizes the opportunities and risks for AI in teaching and learning. Such opportunities for using AI in educational technologies include promising innovations to improve student-educator interactions, address individual learner needs and leverage learner strengths, refine feedback loops that improve learner outcomes, and support educators by reducing administrative task burden and improving practices.

Opportunities to leverage educational technology tools integrating AI to improve learning outcomes and advance equity have been noted for all learners (*e.g.,* Chen et al., 2022; Huang et al., 2021; Zafari et al., 2022; U.S. Department of Education, 2023). Research indicates that these technologies hold promise in supporting individualized instruction and intervention and improving access in multiple areas, including communication, social, literacy, and mathematical skills (*e.g.,* Barua et al., 2022; U.S. Department of Education, 2023). Therefore, it is critical that children with disabilities are provided appropriate levels of support in using existing and developing educational technologies integrating AI (*e.g.,* Barua et al., 2022; Marino et al., 2023) to enhance learner outcomes.

As educational technology tools that integrate AI continue to be developed and made available, factors that support their successful implementation in educational settings need to be considered. For example, evidence-based intelligent tutoring systems have demonstrated positive outcomes for learners, but additional research is needed on how to effectively implement such systems in different settings (*e.g.,* Phillips et al., 2020), including how best to support children with disabilities.

The role of the educator in implementing these technologies to complement ongoing instruction and intervention is critical in supporting children with disabilities (*e.g.,* U.S. Department of Education, 2023). Several key factors that facilitate or limit successful implementation of educational technology tools in educational settings have been noted, including buy-in by and sustainability with users, alignment with existing priorities, development of materials to support fidelity of implementation, how the data are used, technology infrastructure, and data security (*e.g.,* Evmenova et al., 2023; U.S. Department of Education, 2023).

Priority

The purpose of this priority is to fund four cooperative agreements to establish and operate projects that achieve, at a minimum, the following expected outcomes:

(a) Improved student outcomes using an evidence-based technology-based tool or approach[3] that integrates AI;

[1] Applicants should note that other laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.;* 28 CFR part 35) and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794; 34 CFR part 104), may require that State educational agencies (SEAs) and local educational agencies (LEAs) provide captioning, video description, and other accessible educational materials to students with disabilities when these materials are necessary to provide equally integrated and equally effective access to the benefits of the educational program or activity, or as part of a ''free appropriate public education'' as defined in 34 CFR 104.33.

[2] The term ''artificial intelligence'' or ''AI'' has the meaning set forth in 15 U.S.C. 9401(3): a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Artificial intelligence systems use machine- and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inference to formulate options for information or action.

[3] For the purposes of this priority, projects must meet at least the definition of ''promising evidence,'' which means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following: (a) a practice

(b) Improved educator [4] use and knowledge of an evidence-based technology-based tool or approach using AI to deliver effective instruction to students with disabilities;

(c) Improved educator collaboration and professional learning opportunities focusing on improving outcomes for student with disabilities using an evidence-based technology-based tool or approach using AI;

(d) Improved educator and family engagement regarding the use of an evidence-based technology-based tool or approach using AI to support student learning; and

(e) Sustained use of the evidence-based technology-based tool or approach using AI by aligning its use with existing instructional priorities and initiatives.

To be considered for funding under this priority, in the application, applicants must describe the—

(a) Evidence-based technology-based tool or approach that is ready to use at the time of the application submission. If the AI component is not yet completed, describe how this will be integrated within the first year and how it will enhance the current developed technology-based tool or approach;

(b) Outcomes of students with disabilities that will be improved by implementing the technology-based tool or approach using AI;

(c) Approach to increase educators' use and knowledge of the technology-based tool or approach using AI to improve the outcomes of students with disabilities in an instructional setting; [5] and

(d) Fully accessible products and resources that will help educators and families to effectively use and implement the technology-based tool or approach using AI (See for example, NIST AI Risk Management Framework—*https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf-for* information on managing risks across the AI lifecycle).

Note: Grantees may, but are not required to, use up to the first 12 months of the performance period and up to $200,000 of funds awarded in the first budget period for project development activities, including technology enhancement, prior to implementing the tool or approach in instructional settings. If an applicant proposes to use the first year for project development activities, then the applicant must provide sufficient justification, including the goals, objectives, and intended outcomes at the end of year one.

In addition to these programmatic requirements and application requirements, to be considered for funding under this priority, applicants must also meet the following application and administrative requirements:

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will address the need for a technology-based tool or approach that integrates AI. To meet this requirement applicants must—

(1) Verify that the developed technology-based tool or approach and core components of the intervention are based on at least promising evidence;

(2) Describe how AI will be used with the identified technology-based tool or approach and describe the potential to improve student outcomes;

(3) Describe the current impact and reach of the technology-based tool or approach that is currently developed and include the population of users and, if the applicant has received any Federal funding within the last three years related to this technology-based tool or approach, describe how the funding impacted the reach and current use;

(4) Identify how the technology-based tool or approach using AI will improve educators' pedagogy and their capacity to deliver effective instruction for students with disabilities in PK–12 instructional settings;

(5) Identify how the technology-based tool or approach using AI will improve parent/family engagement/partnership to support student learning;

(6) Present applicable national, State, regional, or local data demonstrating the need for the identified technology-based tool or approach using AI to enhance the outcomes for students with disabilities;

(7) Identify how the proposed technology-based tool or approach using AI aligns with current policies, procedures, and practices used by educators to enhance the outcomes for students with disabilities; and

(8) Identify systemic barriers, gaps, or challenges, including challenges to using the identified technology-based tool or approach using AI.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the target population, including students with disabilities and their educators, that the applicant will service, the need that population has for the technology-based tool or approach, and the intended recipients for ongoing professional learning and coaching support; and

(ii) Ensure that the products and resources meet the needs of the intended recipients of this grant;

(2) Utilize a design process for the implementation approach that promotes sustainability of the technology-based tool or approach using AI beyond the life of the project;

(3) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide measurable intended project outcomes;

(4) Be based on current research. To meet this requirement, the applicant must—

(i) Describe how the proposed project will align with current research, policies, and practices related to the benefits, services, or opportunities that are available using the technology-based tool or approach;

(ii) Describe how the proposed project will incorporate current and evidence-based research and practices, including research and practices relating to accessibility and usability, to guide the development and delivery of its products and resources; and

(iii) Document that the technology-based tool or approach to be used by the proposed project is developed, has been tested and shown to have promising evidence, and addresses, at a minimum,

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guide prepared by the What Works Clearinghouse (WWC) reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice recommendation; (b) an intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or (c) a single study assessed by the Department, as appropriate, that is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome. See 34 CFR 77.1 for definitions of ''project component,'' ''promising evidence,'' ''experimental study,'' ''moderate evidence,'' ''quasi-experimental design study,'' ''relevant outcome,'' and ''strong evidence.''

[4] For the purpose of this priority, ''educators'' include teachers, early childhood providers, administrators, paraprofessionals, and other providers.

[5] For the purposes of this priority, an instructional setting can be an environment that is regulated by the public school or an ''early childhood education program,'' as defined under the Higher Education Act of 1965, as amended, within the local educational agency (LEA) (Pub. L. 110–315, title VIII, section 801, Aug. 14, 2008, 122 Stat. 3398).

the following principles of universal design for learning:

(A) Multiple means of representation so that information can be delivered in more than one way (*e.g.,* specialized software and websites, customizing display for visual or physical modalities);

(B) Multiple means of expression that allow knowledge to be exhibited through options (*e.g.,* writing, online concept mapping, or speech-to-text programs, where appropriate); and

(C) Multiple means of engagement to stimulate interest in and motivation for learning (*e.g.,* individual or group learning experiences or activities, learner choice); and

(5) Develop and implement products and resources that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must—

(i) Provide a plan for recruiting and selecting sites from a variety of instructional settings that include the targeted population including students with disabilities, which must include the following:

(A) Two product and resource development sites.[6] Applicants must describe at least two proposed product and resource development sites, where the project would conduct iterative development of the products and resources intended to support the implementation of the technology-based tool or approach and produce, by the end of year two, preliminary feasibility and useability data. Applicants must include a letter in Appendix A from at least one site that indicates agreement to serve as a product and resource development site, at a minimum, in year one of the project.

(B) Three pilot sites. Pilot sites are the sites in which ongoing refinement of the developed products and resources, and the continued collection of feasibility and usability data, will occur. Applicants must describe how they would work with a minimum of three pilot sites no later than year three of the project, where the project would continue to refine the developed products and resources; collect feasibility and usability data; and demonstrate that the educational technology-based tool or approach using AI is producing the intended outcome(s) for students with disabilities.

(C) Five dissemination sites. Applicants must describe how they would work with a minimum of five dissemination sites, where the project would complete its activities, by year four of the project period, to (1) refine the products for use by educators and students, and (2) evaluate the performance of the technology-based tool or approach using AI on educators' pedagogy and students' outcomes. Dissemination sites would receive less implementation support from the project than development and pilot sites.

Note: A site may not serve in more than one category (*i.e.,* development, pilot, dissemination);

(ii) Describe how the project will incorporate components from implementation science[7] to select sites for continued use of the technology-based tool or approach using AI and support and sustain such continued use at the selected site;

(iii) Provide a plan to systematically disseminate information about the technology-based tool or approach using AI to varied audiences throughout the project period. To address this requirement the applicant must describe—

(A) The variety of dissemination strategies the project will use throughout the five years of the project to promote awareness and use of its technology-based tool or approach using AI;

(B) How the project will tailor dissemination strategies across all years of technology refinements and to ensure that, by the end of year two, the technology-based tool or approach can be accessed by, is reaching, and is used by intended recipients;

(C) Dissemination efforts that will go beyond conference presentations and articles and reach intended audiences to support implementation and scale up and increase the use of the technology-based tool or approach using AI by intended users;

(D) How the project's dissemination plan is connected to the proposed outcomes of the project; and

(E) How the project will ensure that all digital products and all external communications are routinely evaluated for and, if necessary, remediated to meet or exceed government or industry-recognized standards for accessibility; and

(iv) Provide assurances that all products or tools developed with project funds will be open educational resources.[8]

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project as described in the following paragraphs. In designing the evaluation plan, the applicant must—

(1) Provide a logic model (as defined in 34 CFR 77.1) or conceptual framework that depicts, at a minimum, the goals, activities, project evaluation, methods, performance measures, outputs, and intended outcomes of the proposed project;

(2) Provide a plan, linked to the proposed project's logic model or conceptual framework, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and resources;

(3) Describe a plan or method for assessing—

(i) The development and pilot sites' educator training use and needs and the knowledge and availability of dedicated on-site technology training personnel;

(ii) The readiness of pilot sites to pilot or try-out the technology-based tool or approach using AI, including, at a minimum, their current infrastructure, technology or instructional alignment, available resources, and ability to build capacity;

(iii) Whether the technology-based tool or approach using AI has achieved its intended outcomes; and

(iv) The ongoing professional learning needs of educators to implement with fidelity;

(4) Describe a plan to collect formative and summative data from the professional learning to refine and evaluate the products and resources;

(5) Describe a plan or method for assessing whether dissemination efforts are increasing the knowledge and use by the intended users of the technology-based tool or approach using AI and the developed products and resources;

(6) Describe a plan to collect summative data to report on the quality, relevance, usefulness, and efficacy of the technology-based tool or approach using AI and its products and resources; and

[6] A ''site'' is a public school building or an ''early childhood education program,'' as defined under the Higher Education Act, within the local educational agency (LEA) (Pub. L. 110–315, title VIII, section 801, Aug. 14, 2008, 122 Stat. 3398).

[7] The following website provides more information about implementation research: *https://nirn.fpg.unc.edu/national-implementation-research-network.*

[8] For additional information on the open licensing requirements please refer to 2 CFR 3474.20 and this resource *https://oese.ed.gov/files/2022/06/Open-Licensing-Requirement-Quick-Guide.pdf.*

(7) Provide an assurance that, by the end of the project period, the project will provide—

(i) Information supported by the project evaluation on the products and resources, including accessibility features, that will enable other sites to implement and sustain implementation of the technology-based tool or approach using AI;

(ii) Information in the project's final performance report, including implementation data, on how intended users (*e.g.,* educators, families, and students) utilized the technology-based tool or approach using AI; how the technology-based tool or approach was implemented with fidelity; and the effectiveness of the technology-based tool or approach using AI in improving outcomes for students with disabilities;

(iii) Data on how the technology-based tool or approach using AI changed educators' practices; and

(iv) A plan for continuing to disseminate or scale up the technology-based tool or approach using AI and accompanying products beyond the sites directly involved in the project.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how the—

(1) Proposed project will encourage applications for employment and project activity opportunities from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) Proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes and how the proposed project team will include qualified experts on topics such as technology, education theory, practice, research methods, and scale-up or commercialization to support sustainability and dissemination;

(3) Applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) Proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and resources provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must include—

(1) In Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) In Appendix A, the logic model or conceptual framework by which the proposed project will develop project plans and activities and achieve its intended outcomes. The logic model or conceptual framework must include a description of any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework and depict, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project; and

Note: The following websites provide more information on logic models and conceptual frameworks: *https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf;www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework; https://www2.ed.gov/fund/grant/about/discretionary/2023-non-regulatory-guidance-evidence.pdf;* and *http://ies.ed.gov/pubsearch/pubsinfo.asp?pubid=REL2015057.*

(3) In the budget, attendance at the following:

(i) A one-day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the Office of Special Education Programs (OSEP) project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative.

(ii) A three-day project directors' conference in Washington, DC, during each year of the project period.

(iii) One annual trip, to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP.

Cohort Collaboration and Support

OSEP project officers will provide coordination support among the projects. Each project funded under this priority must—

(a) Participate in monthly conference-call discussions to collaborate on implementation and project issues; and

(b) Provide annual information to OSEP using a template that captures descriptive data on project site selection and the processes for implementation and use of the technology-based tool or approach.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

Competitive Preference Priority: For FY 2024, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award an additional three points to an application that meets the competitive preference priority. Applicants should indicate in the abstract if the competitive preference priority is addressed and must address the competitive preference priority in the narrative section.

This priority is:

Applications from New Potential Grantees (0 or 3 points).

(a) Under this priority, an applicant must demonstrate that the applicant has not had an active discretionary grant under the 84.327S program from which it seeks funds, including through membership in a group application submitted in accordance with 34 CFR 75.127–75.129, in the five years before the deadline date for submission of applications under the program.

(b) For the purpose of this priority, a grant or contract is active until the end of the grant's or contract's project or funding period, including any extensions of those periods that extend the grantee's or contractor's authority to obligate funds.

References

Barua, P. D., Vicnesh, J., Gururajan, R., Oh,

S. L., Palmer, E., Azizan, M. M., Kadri, N. A., & Acharya, U. R. (2022). Artificial intelligence enabled personalised assistive tools to enhance education of children with neurodevelopmental disorders—A review. *International Journal of Environmental Research and Public Health, 19*(3), 1192–1217. *https://doi.org/10.3390/ijerph19031192.*

Chen, X., Zou, D., Xie, H., Cheng, G., & Liu, C. (2022). Two decades of artificial intelligence in education: Contributors, collaborations, research topics, challenges, and future directions. *Educational Technology & Society, 25*(1), 28–47. *www.jstor.org/stable/48647028.*

Evmenova, A. S., Regan, K. S., Schladant, M., Hall, T. E., Buzhardt, J., Erickson, K. A., Ai, J., Sudduth, C., & Jackson, T. (2023). Stepping-up technology implementation—How does it happen? *Journal of Special Education Technology, 38*(1), 61–74. *https://doi.org/10.1177/01626434221074357.*

Huang, J., Salah, S., & Liu, Y. (2021). A review on artificial intelligence in education. *Academic Journal of Interdisciplinary Studies, 10*(3), 206–217. *https://doi.org/10.36941/ajis-2021-0077.*

Marino, M. T., Vasquez, E., Dieker, L., Basham, J., & Blackorby, J. (2023). The future of artificial intelligence in special education technology. *Journal of Special Education Technology, 38*(3), 404–416. *https://doi.org/10.1177/01626434231165977.*

Phillips, A., Pane, J. F., Reumann-Moore, R., & Shenbanjo, O. (2020). Implementing an adaptive intelligent tutoring system as an instructional supplement. *Educational Technology Research and Development, 68,* 1409–1437. *https://doi.org/10.1007/s11423-020-09745-w.*

U.S. Department of Education, Office of Educational Technology. (2023). *Artificial intelligence and future of teaching and learning: Insights and recommendations. https://tech.ed.gov/ai-future-of-teaching-and-learning.*

Zafari, M., Bazargani, J. S., Sadeghi-Niaraki, A. & Choi, S. M. (2022). Artificial intelligence applications in K–12 education: A systematic literature review. *IEEE Access, 10,* 61905–61921. *https://doi.org/10.1109/ACCESS.2022.3179356.*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the absolute priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Note: Projects will be awarded and must be operated in a manner consistent with nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Administrative Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: The Administration has requested $41,433,000 for the ETechM2 Program for FY 2024, of which we intend to use an estimated $1,500,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2025 from the list of unfunded applications from this competition.

Estimated Range of Awards: $350,000 to $375,000 per year.

Estimated Average Size of Awards: $375,000 per year.

Maximum Award: We will not make an award exceeding $375,000 for a single budget period of 12 months.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that operate as LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to the Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs, nonprofit organizations suitable to carry out the activities proposed in the application, and other public agencies. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee, consistent with 34 CFR 75.708(b)(2).

4. *Other General Requirements:*

a. Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

b. Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (15 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The significance of the problem or issue to be addressed by the proposed project;

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses;

(iii) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies; and

(iv) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(b) *Quality of project services (30 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice;

(ii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services;

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services;

(iv) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services; and

(v) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(c) *Quality of the project evaluation (20 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes; and

(v) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation.

(d) *Adequacy of resources and quality of project personnel (20 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel;

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors;

(iii) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization;

(iv) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and

(v) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) Quality of the management plan (15 points).

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project;

(iii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the

proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate; and

(iv) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must

submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the ETechM2 Program. These measures are:

- *Program Performance Measure 1:* The percentage of ETechM2 Program products and services judged to be of high quality by an independent review panel of experts qualified to review the substantial content of the products and services.
- *Program Performance Measure 2:* The percentage of ETechM2 Program products and services judged to be of high relevance to improving outcomes for infants, toddlers, children, and youth with disabilities.
- *Program Performance Measure 3:* The percentage of ETechM2 Program products and services judged to be useful in improving results for infants, toddlers, children, and youth with disabilities.
- *Program Performance Measure 4.1:* The Federal cost per unit of accessible educational materials funded by the ETechM2 Program.
- *Program Performance Measure 4.2:* The Federal cost per unit of accessible educational materials from the National Instructional Materials Access Center funded by the ETechM2 Program.
- *Program Performance Measure 4.3:* The Federal cost per unit of video description funded by the ETechM2 Program.

Program Performance Measures 1, 2, and 3 apply to projects funded under this competition, and grantees are required to submit data on Program Performance Measures 1, 2, and 3 as directed by OSEP.

Grantees will be required to report information on their project's performance in annual performance reports and additional performance data to the Department (34 CFR 75.590 and 75.591).

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024–04316 Filed 2–29–24; 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 April 1, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ira Birnbaum, *Ira.Birnbaum@hq.doe.gov,* 202–304–4940.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–NEW;

(2) *Information Collection Request Title:* DOE Qualified List of Energy Service Companies;

(3) *Type of Request:* New;

(4) *Purpose:* The ESPC statute (42 U.S.C. 8287(b)(2)(A)–(B)) requires the Secretary of Energy to establish and

maintain a list of firms qualified to perform energy efficiency and renewable energy projects specifically using the energy savings performance contracts (ESPCs) project financing methodology. The forms subject to this Paperwork Reduction Act submission constitute the application and recertification statement for inclusion on the DOE Qualified List of Energy Service Companies (ESCOs). The ESCOs on the DOE Qualified List constitute the group of firms that are eligible for contract award under 10 CFR 436.32. ESCOs that would like to bid on ESPC contracts for the Federal government must apply to the DOE Qualified List of ESCOs and complete the annual recertification statement;

(5) *Annual Estimated Number of Respondents:* 128;

(6) *Annual Estimated Number of Total Responses:* 128;

(7) *Annual Estimated Number of Burden Hours:* 466;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $57,318.

Statutory Authority: The ESPC statute (42 U.S.C. 8287(b)(2)(A)–(B)) requires the Secretary of Energy to establish and maintain a list of firms qualified to perform energy efficiency and renewable energy projects specifically using the energy savings performance contracts (ESPCs) project financing methodology.

Signing Authority

This document of the Department of Energy was signed on February 23, 2024, by Mary Sotos, Director, Federal Energy Management Program, 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 February 27, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–04374 Filed 2–29–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB).

DATES: Comments regarding this proposed information collection must be received on or before April 30, 2024. 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 Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 19901 Germantown Road, Rm. G–302, Germantown, MD 20874, or by fax at (301) 903–7738, or by email at *privacyactoffice@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874 or by telephone at (301) 903–3880, or by fax at (301) 903–7738, or by email at *privacyactoffice@hq.doe.gov, https://www.energy.gov/cio/office-chief-information-officer/services/guidance/privacy-program/submitting-privacy-act.*

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.:* 1910–1700;

(2) *Information Collection Request Titled:* Privacy Act Administration;

(3) *Type of Review:* Extension;

(4) *Purpose:* The Privacy Act Information Request form aids the Department of Energy's processing of Privacy Act requests submitted by an individual or an authorized representative, wherein he or she is requesting records the government may maintain on the individual. The Department's use of this form continues to contribute to the implementation of the Department's Privacy Act processes, including, but not limited to, providing for faster processing of Privacy Act information requests by asking individuals or their authorized representative for pertinent information needed for records retrieval;

(5) *Annual Estimated Number of Respondents:* 390;

(6) *Annual Estimated Number of Total Responses:* 390;

(7) *Annual Estimated Number of Burden Hours:* 130;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $14,078.

Statutory Authority: The Privacy Act of 1974, 5 U.S.C. 552a; Department of Energy, Records Maintained on Individuals (Privacy Act), 10 CFR 1008; 42 U.S.C. 7101 *et. seq.;* 50 U.S.C. 2401 *et. seq.*

Signing Authority

This document of the U.S. Department of Energy was signed on February 20, 2024, by Ann Dunkin, Chief Information Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 27, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–04373 Filed 2–29–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket Number: DOE–HQ–2024–0007]

Notice of Request for Information (RFI) Related to DOE's Responsibilities on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence

AGENCY: Office of Critical and Emerging Technologies, Department of Energy.

ACTION: Request for information.

SUMMARY: The Department of Energy (DOE) is seeking information to assist in carrying out certain responsibilities under an Executive order (E.O.) titled ''Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence'' issued on October 30, 2023. Among other things, the E.O. directs DOE to issue a public report within 180 days of the E.O. ''describing the potential for Artificial Intelligence (AI) to improve planning, permitting, investment, and operations for electric grid infrastructure and to enable the provision of clean, affordable, reliable, resilient, and secure electric power to all Americans.'' DOE is soliciting information on one or more of the topics outlined in this RFI to address in the public report. The information provided in response to this RFI will inform the preparation of that report.

DATES: Comments containing information in response to this notice must be received on or before April 1, 2024. Submissions received after that date may not be considered.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic submission: Submit electronic public comments via *www.regulations.gov.*

1. Go to *www.regulations.gov* and enter DOE–HQ–2024–0007 in the search field,

2. Click the ''Comment'' icon and complete the required fields.

Electronic submissions may also be sent as an attachment via email to *AIexecutiveorder.RFI@hq.doe.gov* in any of the following unlocked formats: HTML; ASCII; Word; RTF; Unicode, or PDF.

Written comments may also be submitted by mail to: Department of Energy, Office of Policy, 1000 Independence Avenue SW, Washington, DC 20585. Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages responders to submit comments electronically in order to ensure timely receipt.

Submissions must not exceed 25 pages (when printed) in 12-point or larger font, with a page number provided on each page. Please include your name, organization's name (if any), and cite ''DOE AI Executive Order'' 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 and submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Comments will be available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions about this RFI contact: *AIexecutiveorder.RFI@hq.doe.gov* or Keith Benes, Department of Energy, Office of Policy, 1000 Independence Avenue SW, Washington, DC 20585, 240–278–5478. Direct media inquiries to DOE's Office of Public Affairs at 202–586–4940.

SUPPLEMENTARY INFORMATION: DOE is seeking information to assist in carrying out certain of its responsibilities under section 5.2(g) of E.O. 14110 issued on October 30, 2023 (88 FR 75191). This RFI addresses the specific responsibilities cited below. Other topics in E.O. 14110 are being addressed separately by DOE and other agencies.

In considering information for submission to DOE, respondents are encouraged to review information on DOE's website for the Office of Critical and Emerging Technologies (*www.energy.gov/cet/office-critical-and-emerging-technology*). Respondents are also encouraged to review DOE's AI Risk Management Playbook (*https://www.energy.gov/ai/doe-ai-risk-management-playbook-airmp*) and the Advanced Research Directions on AI for Science, Energy, and Security report prepared by a consortium of DOE National Laboratories (*www.anl.gov/sites/www/files/2023-05/AI4SESReport-2023.pdf*).

Information that is specific and actionable is of more interest than general statements. Copyright protections of materials, if any, should be clearly noted. Responses that include information generated by means of AI techniques should be identified clearly.

E.O. 14110 section 5.2(g) directs DOE to undertake several actions ''to support the goal of strengthening our Nation's resilience against climate change impacts and building an equitable clean energy economy for the future.'' Among those actions, section 5.2(g)(i) directs DOE to issue a public report within 180 days of E.O. 14110 release describing ''the potential for AI to improve planning, permitting, investment, and operations for electric grid infrastructure and to enable the provision of clean, affordable, reliable, resilient, and secure electric power to all Americans.''

E.O. 14110 directs DOE to undertake the actions specified in section 5.2(g), including preparing this report, ''in consultation with the Chair of the Federal Energy Regulatory Commission, the Director of OSTP, the Chair of the Council on Environmental Quality, the Assistant to the President and National Climate Advisor, and the heads of other relevant agencies as the Secretary of Energy may deem appropriate.''

In this RFI, DOE is soliciting input for the public report called for in section 5.2(g)(i). DOE is seeking information regarding topics related to this assignment, including:

1. AI to improve the security and reliability of grid infrastructure and operations and their resilience to disruptions.

DOE is seeking information on how AI can be developed and used by private actors, public-private partnerships, and government entities (at all levels of government, including Federal, State, local, etc.) to improve the security and reliability of grid infrastructure and operations, as well as resilience of the grid to potential disruptions. DOE is specifically requesting comments on the use of AI with regard to the following topics:

- Grid Operations and reliability;
- Improvements in predictive maintenance for utilities;
- For rapid, accurate, and cost-effective load and supply balancing in light of increasing penetration of variable generation sources and increased opportunities for demand management through technologies such as electric vehicle charging/discharging, smart devices, or optimizing clean hydrogen production;
- To improve flexibility of power systems models or other interconnection software tools to facilitate more efficient processing of growing interconnection queues and handling distribution-side generation (such as rooftop solar) and increased demand from demand-side interconnection as, for example, transportation electrifies.
- Grid Resilience:
- Characterization of impacts of climate hazards on electricity system infrastructure, connected to Climate Mapping for Resilience and Adaptation (CMRA) outputs;
- Opportunity for AI-enabled real-time self-healing infrastructure;
- Opportunity for AI-enabled detection and diagnosis of anomalous/malicious events;
- AI-enabled situational awareness and actions for resilience during and after a disruption.

2. AI to improve planning, permitting, and investment in the grid and related clean energy infrastructure.

DOE is seeking information on how AI can be used both by government entities at all levels of government (Federal, State, local, etc.) as well as by private actors to improve the planning,

siting, permitting, and investment in the grid and related clean energy infrastructure. The following is a non-exhaustive list of topics that may be addressed in comments on this topic:

- Opportunities for siting and permitting authorities to utilize AI (*e.g.,* Large Language Models, multi-modal generative, etc.) to improve and expedite their reviews;
- Actions Federal agencies can take to support the effective deployment of generative AI tools to improve project planning, community engagement, and siting and permitting reviews (*e.g.,* processing of existing government documents into AI- and ML-compatible data formats, clarification of standards around use of generative AI in preparation of submittals to government agencies, etc.);
- Steps Federal agencies could take to improve compatibility of existing structured datasets (*e.g.,* geospatial data on environmental resources, endangered species, environmental justice, historic and cultural resources, etc.) with emerging AI models and/or to utilize AI to revise and improve those existing datasets;
- Opportunities to use AI to validate and improve monitoring of existing projects (*e.g.,* environmental mitigation monitoring, supply chain risks, and socio-economic impacts, etc.);
- Opportunities to use AI to illuminate and address artificial, arbitrary, and unnecessary disproportionate impacts on disadvantaged communities from planning, permitting, or operation of energy infrastructure and to improve energy equity;
- Steps that should be taken to ensure transparency about any use of generative AI in government reviews and decision-making processes to avoid unlawful biases or discrimination in AI algorithms and datasets used.

3. AI to help mitigate climate change risks.

DOE is seeking information regarding how AI can be used to strengthen the Nation's resilience against climate change, including opportunities to help predict, prepare for, and mitigate climate-driven risk. The following is a non-exhaustive list of topics that may be addressed in comments on this topic:

- Opportunities to use AI to forecast climate-driven extreme events (*e.g.,* wildfires, flooding, hurricanes, etc.) and their impact on reliability and resilience requirements, as well as potential to use AI to mitigate climate-driven extreme event risks or otherwise bolster reliability and resilience;
- Opportunities to use AI to understand and forecast climate impacts on long-term future resource levels (compared to historical levels) and its effect on resource adequacy and availability;
- Opportunities to use AI to improve or accelerate numerical weather prediction models, particularly on time scales relevant to infrastructure planning and operations.

Across all of these topics, DOE is seeking information about costs and ease of implementation for tools, systems, practices, and the extent to which they will benefit the public if they can be efficiently adopted and utilized. DOE is interested to learn about how to handle liability for consequences of decisions made by AI algorithms as well as protocols to quantify the benefits of AI. In addition, DOE is interested in information about potential negative effects of broader use of AI on these systems, including concerns about data security and privacy, whether AI may cause unlawful biases or discrimination, and the possibility that AI could have artificial, arbitrary and unnecessary disparate impacts on communities, particularly underserved communities. Pursuant to Executive Order 13985 ''underserved communities'' refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of ''equity.''

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. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority

This document of the Department of Energy was signed on February 21, 2024, by Helena Fu, Director, Office of Critical and Emerging Technologies, 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 February 27, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–04367 Filed 2–29–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Advisory Committee for Nuclear Security

AGENCY: Office of Defense Programs, National Nuclear Security Administration, Department of Energy.

ACTION: Notice of closed meeting.

SUMMARY: This notice announces a closed meeting of the Advisory Committee for Nuclear Security (ACNS). The Federal Advisory Committee Act requires that public notice of meetings be announced in the **Federal Register**. Due to national security considerations, the meeting will be closed to the public and matters to be discussed are exempt from public disclosure.

DATES: March 26, 2024; 9 a.m. to 5 p.m.

ADDRESSES: In-person meeting.

FOR FURTHER INFORMATION CONTACT: Allyson Koncke-Fernandez, Office of Policy and Strategic Planning (NA–1.1) National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 287–5327, *allyson.koncke-fernandez@nnsa.doe.gov*.

SUPPLEMENTARY INFORMATION:

Background: The ACNS provides advice and recommendations to the Under Secretary Nuclear Security & Administrator, NNSA areas and those of the National Nuclear Security Administration.

Purpose of the Meeting: The Quarterly meeting of the Advisory Committee for Nuclear Security (ACNS) will cover the current status of Committee activities as well as additional charges and is expected to contain discussions of a sensitive nature.

Type of Meeting: In the interest of national security, the meeting will be closed to the public under Executive

Order 13526 and the Atomic Energy Act of 1954. The Federal Advisory Committee Act, 5 U.S.C. app. 2, section 10(d), and the Federal Advisory Committee Management Regulation, 41 CFR 102–3.155, incorporate by reference the Government in the Sunshine Act, 5 U.S.C. 552b, which, at 552b(c)(1) and (c)(3) permits closure of meetings where restricted data or other classified matters will be discussed.

Tentative Agenda: Welcome; Headquarters and ACNS Updates; discussion of reports and current actions; discussion of next charges; conclusion.

Public Participation: There will be no public participation in this closed meeting. Those wishing to provide written comments or statements to the Committee are invited to send them to Allyson Koncke-Fernandez at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Minutes: The minutes of the meeting will not be available.

Signing Authority: This document of the Department of Energy was signed on February 26, 2024, by David Borak, Deputy Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 27, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–04368 Filed 2–29–24; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–113]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed February 16, 2024 10 a.m. EST Through February 26, 2024 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20240032, Draft, NOAA, HI, Proposed Papahānaumokuākea National Marine Sanctuary Draft Environmental Impact Statement, Comment Period Ends: 05/07/2024, Contact: Ellie Roberts 240–533–0676.

EIS No. 20240033, Final, BOEM, MA, New England Wind Project, Review Period Ends: 04/01/2024, Contact: Lindy Nelson 571–789–6485.

EIS No. 20240034, Draft, USA, BLM, AZ, Legislative Environmental Impact Statement Regarding Proposed Public Land Withdrawal in Vicinity of Arizona State Route 95, Yuma Proving Ground, Arizona, Comment Period Ends: 04/15/2024, Contact: Daniel Steward 928–328–2125.

EIS No. 20240035, Draft, BOP, KY, Proposed Development of a New Federal Correctional Institution and Federal Prison Camp—Letcher County, Kentucky, Comment Period Ends: 04/15/2024, Contact: Kimberly Hudson 202–451–7046.

EIS No. 20240036, Final, DOE, MI, ADOPTION—GENERIC—License Renewal of Nuclear Plants Supplement 27 to NUREG–1437 Regarding Palisade Nuclear Plant (TAC NO. MC6434) Located in Covert Township Van Buren County MI, Review Period Ends: 04/01/2024, Contact: Alicia Williamson 202–526–7272.

The Department of Energy (DOE) has adopted the Nuclear Regulatory Commission's Final EIS No. 20060432 filed 10/13/2006 with the Environmental Protection Agency. The DOE was not a cooperating agency on this project. Therefore, republication of the document is necessary under Section 1506.3(b)(1) of the CEQ regulations.

Amended Notice

EIS No. 20240002, Draft, BOEM, NY, New York Bight, Comment Period Ends: 03/13/2024, Contact: Jill Lewandowski 703–787–1703.

Revision to FR Notice Published 01/12/2024; Extending the Comment Period from 02/26/2024 to 03/13/2024.

Dated: February 26, 2024.

Julie Smith,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2024–04346 Filed 2–29–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9542–05–OAR]

Information Regarding Allowances Used in Cross-State Air Pollution Rule (CSAPR) Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on emission allowance allocations to certain units under the Cross-State Air Pollution Rule (CSAPR) trading programs. EPA has completed preliminary calculations for the allocations of allowances from the new unit set-asides (NUSAs) for the 2023 control periods and has posted spreadsheets containing the calculations on EPA's website. EPA will consider timely objections to the preliminary calculations (including objections concerning the identification of units eligible for allocations) before determining the final amounts of the allocations. Additionally, EPA is making available an estimate of the data and calculations to be used in the allowance bank recalibration process for the 2024 control period under the CSAPR NO_X Ozone Season Group 3 Trading Program.

DATES: Objections to the information referenced in this notice concerning NUSA allocations must be received on or before April 1, 2024.

ADDRESSES: Submit your objections via email to *CSAPR@epa.gov.* Include ''2023 NUSA allocations'' in the email subject line and include your name, title, affiliation, address, phone number, and email address in the body of the email.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Garrett Powers at (202) 564–2300 or *powers.jamesg@epa.gov* or Morgan Riedel at (202) 564–1144 or *riedel.morgan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Allocations From New Unit Set-Asides

Under each CSAPR trading program where EPA is responsible for determining emission allowance

allocations, a portion of each state's emissions budget for the program for each control period is reserved in a NUSA (and, under most of the trading programs, in an additional Indian country NUSA in the case of states with Indian country within their borders) for allocation to certain units that would not otherwise receive allowance allocations. The procedures for identifying the eligible units for each control period and for allocating allowances from the NUSAs and Indian country NUSAs to these units are set forth in the CSAPR trading program regulations at 40 CFR 97.411(b) and 97.412 (NO_X Annual), 97.511(b) and 97.512 (NO_X Ozone Season Group 1), 97.611(b) and 97.612 (SO_2 Group 1), 97.711(b) and 97.712 (SO_2 Group 2), 97.811(b) and 97.812 (NO_X Ozone Season Group 2), and 97.1012 (NO_X Ozone Season Group 3). Each NUSA allowance allocation process involves allocations to eligible units, termed ''new'' units, followed by the allocation to ''existing'' units of any allowances not allocated to new units.[1]

This notice concerns preliminary calculations for the NUSA allowance allocations for the 2023 control periods. Generally, the allocation procedures call for each eligible ''new'' unit to receive a 2023 NUSA allocation equal to its 2023 control period emissions as reported under 40 CFR part 75 unless the total of such allocations to all such eligible units would exceed the amount of allowances in the NUSA, in which case the allocations are reduced on a pro-rata basis. (EPA notes that, under 40 CFR 97.406(c)(3), 97.506(c)(3), 97.606(c)(3), 97.706(c)(3), 97.806(c)(3), and 97.1006(c)(3), a unit's emissions occurring before its monitor certification deadline are not considered to have occurred during a control period and consequently are not included in the emission amounts used to determine NUSA allocations.) Any allowances not allocated to eligible ''new'' units are allocated to the state's ''existing'' units in proportion to such existing units' previous allocations from the portion of the respective state's emissions budget for the control period that was not reserved in a NUSA (or Indian country NUSA).

The detailed unit-by-unit data and preliminary allowance allocation calculations for ''new'' units are set forth in Excel spreadsheets titled ''CSAPR_NUSA_2023_NO_X_Annual_Prelim_Data_New_Units'', ''CSAPR_NUSA_2023_NO_X_OS_Prelim_Data_New_Units'', and ''CSAPR_NUSA_2023_SO_2_Prelim_Data_New_Units'', available on EPA's website at *www.epa.gov/csapr/csapr-allowance-allocations#nusa.* Each of the spreadsheets contains a separate worksheet for each state covered by that program showing, for each unit identified as eligible for a NUSA allocation, (1) the unit's emissions in the 2023 control period (annual or ozone season as applicable), (2) the maximum 2023 NUSA allowance allocation for which the unit is eligible (typically the unit's emissions in the 2023 control period), (3) various adjustments to the unit's maximum allocation if the NUSA pool is oversubscribed, and (4) the preliminary calculation of the unit's 2023 NUSA allowance allocation.

Each state worksheet for ''new'' units also contains a summary showing (1) the quantity of allowances initially available in that state's 2023 NUSA, (2) the sum of the 2023 NUSA allowance allocations that will be made to new units in that state, assuming there are no corrections to the data, and (3) the quantity of allowances that would remain in the 2023 NUSA for allocation to existing units, again assuming there are no corrections to the data.

The preliminary calculations of allocations of the remaining unallocated allowances to ''existing'' units are set forth in Excel spreadsheets titled ''CSAPR_NUSA_2023_NO_X_Annual_Prelim_Data_Existing_Units'', ''CSAPR_NUSA_2023_NO_X_OS_Prelim_Data_Existing_Units'', and ''CSAPR_NUSA_2023_SO_2_Prelim_Data_Existing_Units'', available at the same location.

Objections should be strictly limited to the data and calculations upon which the NUSA allowance allocations are based and should be emailed to the address identified in **ADDRESSES**. Objections must include: (1) precise identification of the specific data and/or calculations the commenter believes are inaccurate, (2) new proposed data and/or calculations upon which the commenter believes EPA should rely instead to determine allowance allocations, and (3) the reasons why EPA should rely on the commenter's proposed data and/or calculations and not the data referenced in this notice.

EPA notes that an allocation or lack of allocation of allowances to a given unit under a given CSAPR trading program does not constitute a determination that the trading program does or does not apply to the unit. EPA also notes that, under 40 CFR 97.411(c), 97.511(c), 97.611(c), 97.711(c), 97.811(c), 97.1011(c), and 97.1012(c), allocations are subject to potential correction if a unit to which allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.

II. Information for the Allowance Bank Recalibration Procedures

The CSAPR NO_X Ozone Season Group 3 Trading Program includes provisions calling for EPA to annually recalibrate the bank of CSAPR NO_X Ozone Season Group 3 allowances if the total quantity of banked allowances from previous control periods held in all facility and general accounts after compliance deductions for those control periods exceeds an allowance bank ceiling target for the current control period. The allowance bank recalibration procedures are set forth in the trading program regulations at 40 CFR 97.1026(d). Generally, if recalibration takes place for a given control period, the amount of banked CSAPR NO_X Ozone Season Group 3 allowances from previous control periods held in each facility or general account will be adjusted so that the amount of such banked allowances held in the account after recalibration will equal the amount held in the account immediately before recalibration multiplied by the allowance bank ceiling target, divided by the total amount of such banked allowances held in all facility and general accounts immediately before recalibration, and rounded up to the nearest allowance. Allowance bank recalibration for a given control period applies only to holdings of banked allowances issued for previous control periods; it does not affect any holdings of allowances issued for that control period. The regulations call for EPA to carry out the allowance bank recalibration procedures for the 2024 control period as soon as practicable on or after August 1, 2024.[2]

For the 2024 control period, the allowance bank ceiling target is expected to be 12,605 tons, computed as 21% the sum of the 2024 state emission budgets for the ten states currently covered by the trading program. Based on the emissions and allowance data available at *campd.epa.gov* as of the date of signature of this notice, EPA estimates that after allowance deductions for 2023 compliance are completed in June 2024, approximately

[1] The CSAPR NO_X Ozone Season Group 3 Trading Program serves as the compliance mechanism for electricity generating units under the Good Neighbor Plan (88 FR 36654, June 5, 2023). As of the date of signature of this notice, applications for a stay of the Good Neighbor Plan are pending before the Supreme Court of the United States. If a stay order is issued and depending on its nature, it could affect EPA's ability to implement the regulatory provisions of the CSAPR NO_X Ozone Season Group 3 Trading Program that are described in this notice.

[2] See note 1, supra.

38,585 banked vintage 2021–2023 allowances will be held in facility or general accounts (84,378 current allowance holdings + 3,365 upcoming NUSA allocations − 49,158 reported 2023 ozone season emissions = 38,585 estimated remaining allowances). Based on these figures, EPA expects that allowance bank recalibration will take place for the 2024 control period and estimates that the amount of banked vintage 2021–2023 allowances that will be held in each facility or general account after recalibration will be the amount of such banked allowances held in the account immediately before recalibration multiplied by 12,605 and divided by 38,585 (or, equivalently, the amount of such banked allowances held in the account immediately before recalibration multiplied by approximately 33%). In the actual allowance bank recalibration process, instead of using the estimated figures described in this notice, EPA will use the most current information available as of the recalibration date.

(Authority: 40 CFR 97.411(b), 97.511(b), 97.611(b), 97.711(b), 97.811(b), and 97.1012(a).)

Rona Birnbaum,

Director, Clean Air Markets Division, Office of Atmospheric Protection, Office of Air and Radiation.

[FR Doc. 2024–04291 Filed 2–29–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Sole Source Cooperative Agreement To Fund Ministry of Health (MOH)—AIDS Control Program

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $15,000,000, for Year 1 funding to MOH—AIDS Control Program. The award will support achievement of HIV epidemic control in Uganda by supporting the MOH to develop and disseminate key national policies and guidelines, increase technical capacity, ensure quality of health services, improve data quality and utilization, and provide leadership and direction to all partners engaged in the epidemic response. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2024, through September 29, 2029.

FOR FURTHER INFORMATION CONTACT: Kathy Grooms, Center for Global Health, Centers for Disease Control and Prevention, Embassy, Centers for Disease Control and Prevention Kampala, Uganda, Telephone: 404.718.2578, Email: *kwg1@cdc.gov.*

SUPPLEMENTARY INFORMATION: The sole source award(s) will strengthen technical and management capacity to review and develop key policies and guidelines and support the standardization and harmonization of the HIV/AIDS/TB response in Uganda.

MOH—AIDS Control Program is in a unique position to conduct this work, as it has the authority, mandate, and ability to oversee, regulate, report on, and lead the overall health sector performance and activity implementation. No other entity can perform the duties of the MOH. The short-term success and long-term sustainability of HIV epidemic control, as well as general disease control and mitigation depend upon strong leadership and coordination from the MOH—AIDS Control Program.

Summary of the Award

Recipient: Ministry of Health (MOH)—AIDS Control Program.

Purpose of the award: The purpose of this award is to support achievement of HIV epidemic control in Uganda by supporting the MOH to develop and disseminate key national policies and guidelines, increase technical capacity, ensure quality of health services, improve data quality and utilization, and provide leadership and direction to all partners engaged in the epidemic response.

Amount of award: For MOH—AIDS Control Program, the approximate year 1 funding amount will be $15,000,000 in Federal Fiscal Year (FYY) 2024 funds, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601, *et seq.*] and Public Law 110–293 (the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008), and Public Law 113–56 (PEPFAR Stewardship and Oversight Act of 2013).

Period of performance: The period for this award will be September 30, 2024, through September 29, 2029.

Dated: February 26, 2024.

Jamie Legier,

Acting Director, Office of Grants Services, Centers for Disease Control and Prevention.

[FR Doc. 2024–04404 Filed 2–29–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10174 and CMS–R–64]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 1, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open

for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Collection of Prescription Drug Data from MA–PD, PDP and Fallout Plans/Sponsors for Medicare Part D Payments; *Use:* The PDE data is used in the Payment Reconciliation System to perform the annual Part D payment reconciliation, any PDE data within the Coverage Gap Phase of the Part D benefit is used for invoicing in the CGDP, and the data are part of the report provided to the Secretary of the Treasury for Section 9008.

Sections 11001 through 11004 of the Inflation Reduction Act of 2022 establish a Medicare Drug Negotiation Program for high-expenditure drugs. Section 11102 of the Inflation Reduction Act of 2022 establishes a Part D inflation rebate by manufacturers of certain single source drugs and biologicals with prices increasing at a rate faster than the rate of inflation. CMS will use data reported under sections 1860D–15(c)(1)(C) and (d)(2), in part, to rank drugs by total expenditures under Part D in order to select drugs for negotiation and to identify units to calculate inflation rebates.

The information users will be pharmacy benefit managers (PBMs), third party administrators and pharmacies, and the PDPs, MA–PDs, Fallbacks, and other plans that offer coverage of outpatient prescription drugs under the Medicare Part D benefit to Medicare beneficiaries. The statutorily required data is used primarily for payment and is used for claim validation as well as for other legislated functions such as quality monitoring, program integrity and oversight. In addition, the PDE data are used to support operations and program development. *Form Number:* CMS–10174 (OMB control number: 0938–0982); *Frequency:* Monthly; *Affected Public:* Private sector and Federal Government; *Number of Respondents:* 856; *Total Annual Responses:* 1,499,064,780; *Total Annual Hours:* 62,918. (For policy questions regarding this collection contact Shelly Winston at 410–786–3694.)

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Indirect Medical Education and Direct Graduate Medical Education; *Use:* Section 1886(d)(5)(B) of the Social Security Act requires additional payments to be made under the Medicare Prospective Payment System (PPS) for the indirect medical educational costs a hospital incurs in connection with interns and residents (IRs) in approved teaching programs. In addition, title 42, part 413, sections 75 through 83 implement section 1886(d) of the Act by establishing the methodology for Medicare payment for the costs of direct graduate medical educational activities.

The information collected on IRs is used by Part- A Medicare Administrative Contractors (MAC) to verify the number of IRs FTE used in the calculation of Medicare payments for IME and GME. The IR data submitted by the hospitals to the MACs is uploaded into CMS' Intern and Resident Information System (IRIS) database to identify duplicate FTEs reported for any IR.

The MACs use the information collected on IRs to ensure that all program payments for IME and GME are accurate and are in accordance with Medicare regulations. The IR data submitted by the hospitals to the MACs are used to audit the Medicare cost reports filed by the hospitals. *Form Number:* CMS–R–64 (OMB control number: 0938–0456); *Frequency:* Monthly; *Affected Public:* Private sector and Federal Government; *Number of Respondents:* 1,245; *Total Annual Responses:* 1,245; *Total Annual Hours:* 2,490. (For policy questions regarding this collection contact Owen Osaghae at 410–786–7550.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–04341 Filed 2–29–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 061

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a publication containing modifications the Agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA Recognized Consensus Standards). This publication, entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 061'' (Recognition List Number: 061), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit either electronic or written comments on the notice at any time. These modifications to the list of recognized standards are applicable March 1, 2024.

ADDRESSES: You may submit comments on the current list of FDA Recognized Consensus Standards at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your

comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2004–N–0451 for ''Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 061.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 061.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

An electronic copy of Recognition List Number: 061 is available on the internet at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* See section IV for electronic access to the searchable database for the current list of FDA-recognized consensus standards, including Recognition List Number: 061 modifications and other standards-related information. Submit written requests for a single hard copy of the document entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 061'' to Terry Woods, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Silver Spring, MD 20993, 301–796–2503. Send one self-addressed adhesive label to assist that office in processing your request or fax your request to 301–847–8144.

FOR FURTHER INFORMATION CONTACT: Terry Woods, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Silver Spring, MD 20993, 301–796–2503, *CDRHStandardsStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360d). Amended section 514 of the FD&C Act allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In the **Federal Register** of September 14, 2018 (83 FR 46738), FDA announced the availability of a guidance entitled ''Appropriate Use of Voluntary Consensus Standards in Premarket Submissions for Medical Devices.'' The guidance describes how FDA has implemented its standards recognition program and is available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/appropriate-use-voluntary-consensus-standards-premarket-submissions-medical-devices.* Modifications to the initial list of recognized standards, as published in the **Federal Register**, can be accessed at *https://www.fda.gov/medical-devices/standards-and-conformity-assessment-program/federal-register-documents.*

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The Agency maintains on its website HTML and PDF versions of the list of FDA Recognized Consensus Standards, available at *https://www.fda.gov/medical-devices/standards-and-conformity-assessment-program/federal-register-documents.* Additional information on the Agency's Standards and Conformity Assessment Program is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/standards-and-conformity-assessment-program.*

II. Modifications to the List of Recognized Standards, Recognition List Number: 061

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the Agency is recognizing for use in premarket submissions and other requirements for devices. FDA is incorporating these modifications to the list of FDA Recognized Consensus Standards in the Agency's searchable database. FDA is using the term ''Recognition List Number: 061'' to identify the current modifications.

In table 1, FDA describes the following modifications: (1) the withdrawal of standards and their replacement by others, if applicable; (2) the correction of errors made by FDA in listing previously recognized standards; and (3) the changes to the

supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III, FDA lists modifications the Agency is making that involve new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 061.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
		A. Anesthesiology	
1–73	1–162	ISO 10651–4 Second edition 2023–03 Lung ventilators—Part 4: Particular requirements for user-powered resuscitators.	Withdrawn and replaced with newer version.
1–105	1–163	ISO 80601–2–72 Second edition 2023–06 Medical electrical equipment—Part 2–72: Particular requirements for basic safety and essential performance of home healthcare environment ventilators for ventilator-dependent patients.	Withdrawn and replaced with newer version.
1–118	1–164	ISO 5361 Fourth edition 2023–11 Anaesthetic and respiratory equipment—Tracheal tubes and connectors.	Withdrawn and replaced with newer version.
1–141	1–165	ISO 80601–2–13 Second edition 2022–04 Medical electrical equipment—Part 2–13: Particular requirements for basic safety and essential performance of an anaesthetic workstation.	Withdrawn and replaced with newer version.
		B. Biocompatibility	
2–94	2–302	ASTM F981–23 Standard Practice for Assessment of Muscle and Bone Tissue Responses to Long-Term Implantable Materials Used in Medical Devices.	Withdrawn and replaced with newer version.
2–237	2–303	ISO 10993–17 Second edition 2023–09 Biological evaluation of medical devices—Part 17: Toxicological risk assessment of medical device constituents.	Withdrawn and replaced with newer version.
		C. Cardiovascular	
3–105		IEC 60601–2–25 Edition 2.0 2011–10 Medical electrical equipment—Part 2–25: Particular requirements for the basic safety and essential performance of electrocardiographs.	Extent of recognition.
3–126		IEC 60601–2–27 Edition 3.0 2011–03 Medical electrical equipment—Part 2–27: Particular requirements for the basic safety and essential performance of electrocardiographic monitoring equipment [Including: Corrigendum 1 (2012)].	Extent of recognition.
3–138	3–189	ASTM F2942–19 Standard Guide for *in vitro* Axial, Bending, and Torsional Durability Testing of Vascular Stents.	Withdrawn and replaced with newer version.
		D. Dental/Ear, Nose, and Throat (ENT)	
4–137	4–309	ISO 6877 Third edition 2021–09 Dentistry—Endodontic obturating materials.	Withdrawn and replaced with newer version.
4–151	4–310	ISO 22112 Second edition 2017–08 Dentistry—Artificial teeth for dental prostheses.	Withdrawn and replaced with newer version.
4–188	4–311	ISO 9917–2 Third edition 2017–09 Dentistry—Water-based cements—Part 2: Resin-modified cements.	Withdrawn and replaced with newer version.
4–190	4–312	ANSI/ASA S3.35–2021 American National Standard Method for Method of Measurement of Performance Characteristics of Hearing Aids Under Simulated Real-Ear Working Conditions.	Withdrawn and replaced with newer version.
4–218	4–313	ISO 27020 Second edition 2019–06 Dentistry—Brackets and tubes for use in orthodontics.	Withdrawn and replaced with newer version.
4–221	4–314	ISO 7494–2 Third edition 2022–07 Dentistry—Stationary dental units and dental patient chairs—Part 2: Air, water, suction and wastewater systems.	Withdrawn and replaced with newer version.
4–224	4–315	ISO 24234 Third edition 2021–08 Dentistry—Dental Amalgam	Withdrawn and replaced with newer version.
4–238	4–316	ISO 20127 Second edition 2020–08 Dentistry—Physical properties of powered toothbrushes.	Withdrawn and replaced with newer version.
4–244	4–317	ISO 8325 Third edition 2023–03 Dentistry—Test methods for rotary instruments.	Withdrawn and replaced with newer version.
4–246	4–318	ISO 20749 Second edition 2023–06 Dentistry—Pre-capsulated dental amalgam.	Withdrawn and replaced with newer version.
4–257	4–319	ISO 17730 Second edition 2020–09 Dentistry—Fluoride varnishes	Withdrawn and replaced with newer version.
4–280		ANSI/ADA Standard No. 117–2018 Fluoride varnishes	Withdrawn with transition. See 4–319.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
E. General I (Quality Systems/Risk Management) (QS/RM)			
No new entries at this time.			
F. General II (Electrical Safety/Electromagnetic Compatibility) (ES/EMC)			
No new entries at this time.			
G. General Hospital/General Plastic Surgery (GH/GPS)			
6–338	6–497	ASTM D7866–23 Standard Specification for Radiation Attenuating Protective Gloves.	Withdrawn and replaced with newer version.
H. In Vitro Diagnostics (IVD)			
7–235	7–318	CLSI EP25 2nd Edition Evaluation of Stability of *In Vitro* Medical Laboratory Test Reagents.	Withdrawn and replaced with newer version.
7–304	7–319	CLSI M23 6th Edition Development of *In Vitro* Susceptibility Test Methods, Breakpoints, and Quality Control Parameters.	Withdrawn and replaced with newer version.
I. Materials			
8–171	8–605	ASTM F1609–23 Standard Specification for Calcium Phosphate Coatings for Implantable Materials.	Withdrawn and replaced with newer version.
8–412	8–606	ASTM F2537–23 Standard Practice for Calibration of Linear Displacement Sensor Systems Used to Measure Micromotion.	Withdrawn and replaced with newer version.
8–437	8–607	ASTM F2082/F2082M–23 Determination of Transformation Temperature of Nickel-Titanium Shape Memory Alloys by Bend and Free Recovery.	Withdrawn and replaced with newer version.
8–451	8–608	ASTM F2214–2023 Standard Test Method for In Situ Determination of Network Parameters of Crosslinked Ultra High Molecular Weight Polyethylene (UHMWPE).	Withdrawn and replaced with newer version.
8–475	8–609	ASTM F2026–23 Standard Specification for Polyetheretherketone (PEEK) Polymers for Surgical Implant Applications.	Withdrawn and replaced with newer version.
8–483	8–610	ASTM F601–23 Standard Practice for Fluorescent Penetrant Inspection of Metallic Surgical Implants.	Withdrawn and replaced with newer version.
J. Nanotechnology			
No new entries at this time.			
K. Neurology			
No new entries at this time.			
L. Obstetrics-Gynecology/Gastroenterology/Urology (OB-Gyn/G/Urology)			
No new entries at this time.			
M. Ophthalmic			
No new entries at this time.			
N. Orthopedic			
11–83	.....	ISO 13402 First edition 1995–08–01 Surgical and dental hand instruments—Determination of resistance against autoclaving, corrosion and thermal exposure.	Transferred. See 4–320.
11–276	11–402	ASTM F1798–21 Standard Test Method for Evaluating the Static and Fatigue Properties of Interconnection Mechanisms and Subassemblies Used in Spinal Arthrodesis Implants.	Withdrawn and replaced with newer version.
11–281	.....	ASTM F1672–14 (Reapproved 2019) Standard Specification for Resurfacing Patellar Prosthesis.	Withdrawn with transition. See 11–400.
11–299	.....	ASTM F2068–15 Standard Specification for Femoral Prostheses—Metallic Implants.	Withdrawn with transition. See 11–401.
11–301	.....	ASTM F2091–15 Standard Specification for Acetabular Prostheses	Withdrawn with transition. See 11–401.
11–303	11–403	ASTM F3047M–23 Standard Guide for High Demand Hip Simulator Wear Testing of Hard-on-Hard Articulations.	Withdrawn and replaced with newer version.
11–321	11–404	ASTM F2887–23 Standard Specification for Total Elbow Prostheses	Withdrawn and replaced with newer version.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
11–334	11–405	ASTM F1829–23 Standard Test Method for Static Evaluation of Anatomic Glenoid Locking Mechanism in Shear.	Withdrawn and replaced with newer version.
11–335	11–406	ASTM F3141–23 Standard Guide for Total Knee Replacement Loading Profiles.	Withdrawn and replaced with newer version.
11–341	11–407	ASTM F3140–23 Standard Test Method for Cyclic Fatigue Testing of Metal Tibial Tray Components of Unicondylar Knee Joint Replacements.	Withdrawn and replaced with newer version.
11–377	.....	ASTM F2083–21 Standard Specification for Knee Replacement Prosthesis.	Withdrawn with transition. See 11–400.
O. Physical Medicine			
No new entries at this time.			
P. Radiology			
12–348	.....	IEC 60601–2–54 Edition 2.0 2022–09 Medical electrical equipment—Part 2–54: Particular requirements for the basic safety and essential performance of X-ray equipment for radiography and radioscopy.	Extent of recognition.
12–349	12–352	NEMA PS 3.1–3.20 2023e Digital Imaging and Communications in Medicine (DICOM) set.	Withdrawn and replaced with newer version.
Q. Software/Informatics			
No new entries at this time.			
R. Sterility			
14–141	14–589	ISO 14644–4 Second edition 2022–11 Cleanrooms and associated controlled environments—Part 4: Design, construction and start-up.	Withdrawn and replaced with newer version.
14–379	14–590	ISO 14644–8 Third edition 2022–06 Cleanrooms and associated controlled environments—Part 8: Assessment of air cleanliness by chemical concentration (ACC).	Withdrawn and replaced with newer version.
14–390	14–591	ISO 14644–10 Second edition 2022–05 Cleanrooms and associated controlled environments—Part 10: Assessment of surface cleanliness for chemical contamination.	Withdrawn and replaced with newer version.
14–427	14–592	ISO 13408–1 Third edition 2023–08 Aseptic processing of health care products—Part 1: General requirements.	Withdrawn and replaced with newer version.
14–516	14–593	ASTM F3039–23 Standard Test Method for Detecting Leaks in Nonporous Packaging or Flexible Barrier Materials by Dye Penetration.	Withdrawn and replaced with newer version.
14–530	14–594	ISO 11607–1 Second edition 2019–02 [Including ADM1:2023] Packaging for terminally sterilized medical devices—Part 1: Requirements for materials, sterile barrier systems and packaging systems [Including Amendment 1 (2023)].	Withdrawn and replaced with newer version.
14–531	14–595	ISO 11607–2 Second edition 2019–02 [Including AMD1:2023] Packaging for terminally sterilized medical devices—Part 2: Validation requirements for forming, sealing and assembly processes [Including Amendment 1 (2023)].	Withdrawn and replaced with newer version.
14–573	14–596	ASTM F88/F88M–23 Standard Test Method for Seal Strength of Flexible Barrier Materials.	Withdrawn and replaced with newer version.
S. Tissue Engineering			
No new entries at this time.			

[1] All standard titles in this table conform to the style requirements of the respective organizations.

III. Listing of New Entries

In table 2, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 061. These entries are of standards not previously recognized by FDA.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of standard [1]	Reference No. and date
A. Anesthesiology		
1–166	Gas mixers for medical use—Stand-alone gas mixers.	ISO 11195 Second edition 2018–01.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference No. and date
	B. Biocompatibility	
	No new entries at this time.	
	C. Cardiovascular	
3–190	Sizing parameters of surgical valve prostheses: Requirements regarding the application of ISO 5840–2.	ISO/PAS 7020 First edition 2023–05.
	D. Dental/ENT	
4–320	Surgical and dental and instruments—Determination of resistance against autoclaving, corrosion and thermal exposure.	ISO 13402 First edition 1995–08.
4–321	Dentistry—Intraoral camera	ISO 23450 First edition 2021–03.
4–322	Dentistry—Machinable ceramic blanks	ISO 18675 First edition 2022–05.
4–323	Dentistry—Polymer-based composite machinable blanks	ISO 5139 First edition 2023–05.
4–324	Dentistry—Polymer-based luting materials containing adhesive components	ISO/TS 16506 First edition 2018–03.
	E. General I (QS/RM)	
	No new entries at this time.	
	F. General II (ES/EMC)	
	No new entries at this time.	
	G. GH/GPS	
	No new entries at this time.	
	H. IVD	
7–320	Validation of Assays Performed by Flow Cytometry	CLSI H62 1st Edition.
	I. Materials	
	No new entries at this time.	
	J. Nanotechnology	
18–24	Standard Test Method for Analysis of Hemolytic Properties of Nanoparticles	ASTM E2524–22.
	K. Neurology	
	No new entries at this time.	
	L. OB-Gyn/G/Urology	
9–150	Copper-bearing contraceptive intrauterine devices—Requirements and tests	ISO 7439 Fourth edition 2023–04.
	M. Ophthalmic	
	No new entries at this time.	
	N. OrthopedicX	
11–400	Non-active surgical implants—Joint replacement implants—Specific requirements for knee-joint replacement implants.	ISO 21536 Third edition 2023–07.
11–401	Non-active surgical implants—Joint replacement implants—Specific requirements for hip-joint replacement implants.	ISO 21535 Third edition 2023–07.
11–408	Standard Test Method for Evaluating Knee Bearing (Tibial Insert) Endurance and Deformation Under High Flexion.	ASTM F2777–23.
11–409	Standard Test Methods for Determining the Static Failure Load of Ceramic Knee Femoral Components.	ASTM F3495–23.
	O. Physical Medicine	
	No new entries at this time.	
	P. Radiology	
12–353	American National Standard for Safe Use of Lasers	ANSI Z136.1–2022.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference No. and date
Q. Software/Informatics		
13–129	Software and systems engineering—Software testing—Part 1: General concepts	ISO/IEC/IEEE 29119–1 Second edition 2022–01.
13–130	Medical devices and medical systems—Essential safety and performance requirements for equipment comprising the patient-centric integrated clinical environment (ICE): Part 2–1: Particular requirements for forensic data logging.	ANSI/AAMI 2700–2–1:2022.
13–131	Standard for medical device security—Security risk management for device manufacturers.	ANSI/AAMI SW96:2023.
R. Sterility		
14–597	Water Quality for Processing Medical Devices	ANSI/AAMI ST108:2023.
S. Tissue Engineering		
No new entries at this time.		

[1] All standard titles in this table conform to the style requirements of the respective organizations.

IV. List of Recognized Standards

FDA maintains the current list of FDA Recognized Consensus Standards in a searchable database that may be accessed at *https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm.* Such standards are those that FDA has recognized by notice published in the **Federal Register** or that FDA has decided to recognize but for which recognition is pending (because a periodic notice has not yet appeared in the **Federal Register**). FDA will announce additional modifications and revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under section 514 of the FD&C Act by submitting such recommendations, with reasons for the recommendation, to *CDRHStandardsStaff@fda.hhs.gov*. To be considered, such recommendations should contain, at a minimum, the information available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/standards-and-conformity-assessment-program#process*.

Dated: February 26, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04376 Filed 2–29–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1051]

Clinical Pharmacology Considerations for Antibody-Drug Conjugates; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Clinical Pharmacology Considerations for Antibody-Drug Conjugates,'' which provides recommendations for the development of antibody-drug conjugates (ADCs). Specifically, this guidance addresses the FDA's current thinking regarding clinical pharmacology considerations and recommendations for ADC development programs, including bioanalytical methods, dose selection and adjustment, dose- and exposure-response analysis, intrinsic factors, QTc assessments, immunogenicity, and drug-drug interactions (DDIs) for ADCs with a cytotoxic small-molecule drug or payload. Currently, there are no final FDA guidances outlining the clinical pharmacology considerations for ADCs. This guidance finalizes the draft guidance of the same title issued on February 8, 2022.

DATES: The announcement of the guidance is published in the **Federal Register** on March 1, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as

well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–1051 for ''Clinical Pharmacology Considerations for Antibody-Drug Conjugates.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Rajanikanth Madabushi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903, 301–796–1537, *Rajanikanth.Madabushi@fda.hhs.gov;* or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301 Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Clinical Pharmacology Considerations for Antibody-Drug Conjugates.'' An ADC is a type of therapeutic biologic product that is composed of a small-molecule component and an antibody component conjugated together by a chemical linker. An antibody or antibody fragment carrier is selected or engineered against a specific antigen of interest present on the target, which is ideally unique to the disease state being treated (*e.g.,* a tumor-specific antigen). In general, when the antibody or antibody fragment binds to its target antigen, the ADC is internalized through physiological mechanisms (*e.g.,* endocytosis), at which point the small-molecule drug or payload moiety is released either upon exposure to the low pH of the lysosome or by degradation of the antibody/linker by lysosomal enzymes. The released small-molecule drug then exerts its effect in the targeted cell (*e.g.,* the cells expressing the specific antigen of interest) while ideally minimizing the effect on healthy cells (*e.g.,* cells that do not express the specific antigen of interest).

ADCs combine the selectivity of an antibody or antibody fragment with the potency of a small molecule. Therefore, development of ADCs requires careful consideration of the differences between the clinical pharmacology of the antibody or antibody fragment and the small molecule. This guidance addresses FDA's current thinking regarding clinical pharmacology considerations and recommendations for ADC development programs, including bioanalytical methods, dose selection and adjustment, dose- and exposure-response analysis, intrinsic factors, QTc assessments, immunogenicity, and DDIs.

This guidance finalizes the draft guidance of the same title issued on February 8, 2022 (87 FR 7184). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include: (1) updates to guidance terminology to provide clarity, (2) additional FDA guidance references included in support of existing guidance text, and (3) additional considerations provided for ADC dosing strategies. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Clinical Pharmacology Considerations for Antibody-Drug Conjugates.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 for submission of investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 for submission of new drug applications have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 for submission of biologic license applications have been approved under OMB control number 0910–0338. The collections of information in 21 CFR 201.56 and 201.57 pertaining to the content and format requirements of labeling for prescription drug products and biological products have been approved under OMB control number 0910–0572. The collections of information in 21 CFR part 211

pertaining to current good manufacturing practice requirements have been approved under OMB control number 0910–0139. The collections of information in 21 CFR part 58 pertaining to good laboratory practice for nonclinical laboratory studies have been approved under OMB control number 0910–0119.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: February 26, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04375 Filed 2–29–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act, U.S.C. Appendix 2, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public. Information about SACHRP, the full meeting agenda, and instructions for linking to public access will be posted on the SACHRP website at *https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html.*

DATES: The meeting will be held on Wednesday, March 20, 2024 from 11:00 a.m. until 4:30 p.m., and Thursday, March 21, 2024, from 11:00 a.m. until 4:00 p.m. (times are tentative and subject to change). The confirmed times and agenda will be posted on the SACHRP website as this information becomes available.

ADDRESSES: This meeting will be held via webcast. Members of the public may also attend the meeting via webcast. Instructions for attending via webcast will be posted at least one week prior to the meeting at *https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html.*

FOR FURTHER INFORMATION CONTACT: Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; telephone: 240–453–8141; fax: 240–453–6909; email address: *SACHRP@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects.

The Subpart A Subcommittee (SAS) was established by SACHRP in October 2006 and is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment.

The Subcommittee on Harmonization (SOH) was established by SACHRP at its July 2009 meeting and charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination. The SACHRP meeting will open to the public at 11:00 a.m., on Wednesday, March 20, 2023, followed by opening remarks from Julie Kaneshiro, Acting Director of OHRP and Dr. Douglas Diekema, SACHRP Chair. The meeting will begin with a discussion of the draft recommendation, Ethical and Regulatory Considerations for the Inclusion of LGBTQI+ Populations in HHS Human Subjects Research. This topic is a continuation of the discussion and speaker panel presented at the October 2023 SACHRP. This will be followed by discussion of Considerations for Uninformative Research. The first day will adjourn at approximately 4:30 p.m. The second day of the meeting, March 21st, will begin at 11:00 with a discussion of Interpretation of the Best-interests Standard for the Retention of Subjects in Human Subjects Research that Has Been Halted or Suspended. Other topics may be added; for the full and updated meeting agenda, see *http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html.* The meeting will adjourn by 4:00 p.m., March 21, 2024.

Time will be allotted for public comment on both days of the meeting. The public may submit written public comment in advance to *SACHRP@hhs.gov* no later than midnight March 14th, 2023, ET. Written comments will be shared with SACHRP members and may read aloud during the meeting. Comments which are read aloud are limited to three minutes each. Public comment must be relevant to topics being addressed by the SACHRP.

Dated: February 23, 2024.

Julia G. Gorey,

Executive Director, SACHRP, Office for Human Research Protections.

[FR Doc. 2024–04343 Filed 2–29–24; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government Owned Inventions Available for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Inquiries related to this licensing opportunity should be directed to: Andrew Burke Ph.D., Technology Transfer Manager, NCI, Technology Transfer Center, email: *burkear@mail.nih.gov* or phone: (240) 276–5484.

SUPPLEMENTARY INFORMATION:

NIH Reference Number: E–251–2023–0.

Title: T Cell Receptors Targeting EGFR L858R mutation on HLA–A*11:01 + Tumors.

Tumor-specific mutated proteins can create neoepitopes, mutation-derived antigens that distinguish tumor cells from healthy cells, which are attractive targets for adoptive cell therapies. However, the process of precisely identifying the neoepitopes to target is complex and challenging. One method to identify such neoepitopes is Mass Spectrometry (MS) when used in conjunction with elution of peptides bound to a specific Human Leukocyte Antigen (HLA) allele. Using MS in this

context can demonstrate which oncogene derived neoepitopes are presented by common HLA alleles, and can provide the data necessary to rapidly develop TCRs against the desired antigens.

Using the MS approach, inventors at the National Cancer Institute (NCI) have identified neoepitopes derived from a mutated isoform of Epithelial Growth Factor Receptor (EGFR) presented by HLA A*11:01 across multiple biological replicates. From this MS data, the inventors were able to successfully isolate murine TCRs that specifically recognize HLA A*11:01 restricted neoepitopes targeting EGFR L858R. According to various cancer genome databases, EGFR L858R is highly prevalent in lung adenocarcinoma, non-small cell lung carcinoma, and non-squamous non-small cell lung carcinoma, making this driver mutation an excellent target to develop off-the-shelf cellular therapies. The clinical potential of these TCRs has not been explored.

Therapeutic Area(s): Cancer.

Research uses include: TCRs may be used as positive controls to identify HLA–A*11:01 EGFR L858R reactive T cells from different sources such as patients or animal models; TCRs recognize the common EGFR L858R driver mutation in the context of HLA–A*11:01; EGFR; the prevalence of EGFR L858R substitutions, relative to the overall EGFR mutation population, ranges from 27.7% to 41.1% in non-small cell lung cancer patients; HLA–A*11:01 allele frequency is particularly high (up to 60%) in Asian and Oceanian populations. This research has validated the effectiveness of using mass spectrometry to detect amino acid sequences on specific HLA complexes.

Achieving expeditious commercialization of federally funded research and development is consistent with the goals of the Bayh-Dole Act, codified as 35 U.S.C. 200–212 and 37 CFR 404.4.

Development Stage: Research Tool.

Dated: February 26, 2024.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2024–04251 Filed 2–29–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Population Sciences and Epidemiology Integrated Review Group, Aging, Injury, Musculoskeletal, and Rheumatologic Disorders Study Section, March 14, 2024, 09:00 a.m. to March 15, 2024, 08:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on February 26, 2024, 89 FR 14081, Doc 2024–03762.

This meeting is being amended to change the location to Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314. The meeting time will remain the same. The meeting is closed to the public.

Dated: February 26, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–04306 Filed 2–29–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

FOR FURTHER INFORMATION CONTACT: Anastasia Flanagan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Flanagan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) publishes a notice listing all HHS-certified laboratories and Instrumented Initial Testing Facilities (IITFs) in the **Federal Register** during the first week of each month, in accordance with Section 9.19 of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and Section 9.17 of the Mandatory Guidelines using Oral Fluid. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/drug-testing-resources/certified-lab-list.*

HHS separately notifies Federal agencies of the laboratories and IITFs currently certified to meet the standards of the Mandatory Guidelines using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); January 23, 2017 (82 FR 7920); and on October 12, 2023 (88 FR 70768).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020, and subsequently revised in the **Federal Register** on October 12, 2023 (88 FR 70814).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for Federal

agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid effective October 10, 2023 (88 FR 70814), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare *, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295 (Formerly: Legacy Laboratory Services Toxicology MetroLab)

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.;, CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Omega Laboratories, Inc.*, 2150 Dunwin Drive, Unit 1 & 2, Mississauga, ON, Canada L5L 5M8, 289–919–3188

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories continued under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory as meeting the minimum standards of the current Mandatory Guidelines published in the **Federal Register**. After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program. DOT established this process in July 1996 (61 FR 37015) to allow foreign laboratories to participate in the DOT drug testing program.

Anastasia D. Flanagan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2024–04345 Filed 2–29–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2024–0001]

Notice of Cybersecurity and Infrastructure Security Agency Cybersecurity Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee Act meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the CISA Cybersecurity Advisory Committee Quarterly Meeting will be held virtually on Thursday, March 21, 2024. This meeting will be partially closed to the public.

DATES: *Meeting Registration:* Registration to attend the meeting is required and must be received no later than 5 p.m. Eastern Time (ET) on Tuesday, March 19, 2024.

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5 p.m. ET on March 19, 2024.

Written Comments: Written comments must be received no later than 5 p.m. ET on March 19, 2024.

Meeting Date: The CSAC will meet virtually on Thursday, March 21, 2024, from 12:30 p.m. to 4:00 p.m. ET. The meeting may close early if the committee has completed its business.

ADDRESSES: The CISA Cybersecurity Advisory Committee's meeting will be open to the public, per 41 CFR 102–3.150 and will be held virtually. Members of the public may participate via teleconference only. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance, please email *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov* by 5 p.m. ET Tuesday, March 19, 2024. The CISA Cybersecurity Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Ms. Megan Tsuyi at (202) 594–7374 as soon as possible.

Comments: Members of the public are invited to provide comment on issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be made available for review at *https://www.cisa.gov/cisa-cybersecurity-advisory-committee-meeting-resources* by Tuesday, March 19, 2024. Comments should be submitted by 5 p.m. ET on Thursday, March 14, 2024 and must be identified by Docket Number CISA–2024–0001. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.* Include the Docket Number CISA–2024–0001 in the subject line of the email.

Instructions: All submissions received must include the words ''Cybersecurity and Infrastructure Security Agency'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided. You may wish to review the Privacy & Security notice available via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket and comments received by the CISA Cybersecurity Advisory Committee, please go to *www.regulations.gov* and enter docket number CISA–2024–0001.

A public comment period is scheduled to be held during the meeting from 2:50 p.m. to 3:00 p.m. ET. Speakers who wish to participate in the public comment period must email *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov* to register. Speakers should limit their comments to 3 minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, depending on the number of speakers who register to participate.

FOR FURTHER INFORMATION CONTACT: Megan Tsuyi, 202–594–7374, *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The CISA Cybersecurity Advisory Committee was established under the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283. Notice of this meeting is given under FACA, 5 U.S.C. ch. 10. The CISA Cybersecurity Advisory Committee advises the CISA Director on matters related to the development, refinement, and implementation of policies, programs, planning, and training pertaining to the cybersecurity mission of the Agency.

Agenda: The CISA Cybersecurity Advisory Committee will hold a virtual meeting on Thursday, March 21, 2024, from 12:30 p.m. to 4:00 p.m. ET to discuss current CISA Cybersecurity Advisory Committee activities. The open session will last from 2:45 p.m. to 4:00 p.m. ET and will include: (1) a period for public comment, and (2) an update on subcommittee progress.

The Committee will also meet in a closed session from 12:30 p.m. to 2:30 p.m. ET to participate in an operational discussion that will address areas of critical cybersecurity vulnerabilities and priorities for CISA. Government officials will share sensitive information with Committee members on initiatives and future security requirements for assessing cyber risks to critical infrastructure.

Basis for Closure: In accordance with section 10(d) of FACA and 5 U.S.C. 552b(c)(9)(B), The Government in the Sunshine Act, it has been determined that certain agenda items require closure, as the premature disclosure of the information that will be discussed would be likely to significantly frustrate implementation of proposed agency actions.

This agenda item addresses areas of CISA's operations that include critical cybersecurity vulnerabilities and priorities for CISA. Government officials will share sensitive information with Committee members on initiatives and future security requirements for assessing cyber risks to critical infrastructure.

As the premature disclosure of the information that will be discussed would be likely to significantly frustrate implementation of proposed agency action, this portion of the meeting is required to be closed pursuant to section 10(d) of FACA and 5 U.S.C. 552b(c)(9)(B).

Megan M. Tsuyi,

Designated Federal Officer, CISA Cybersecurity Advisory Committee, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2024–04308 Filed 2–29–24; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2024–N010; FXES11130600000–245–FF06E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits, permit renewals, and/or permit amendments to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the applications by April 1, 2024.

ADDRESSES: *Document availability and comment submission:* Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* Smith, PER0123456 or Jones, ES–056001):

- *Email: permitsR6ES@fws.gov.*
- *U.S. Mail:* Tom McDowell, Division Manager, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Robert Krijgsman, Recovery Permits Coordinator, Ecological Services, 303–236–4347 (phone), or *permitsR6ES@fws.gov* (email). 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, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

With some exceptions, the ESA prohibits take of listed species unless a Federal permit is issued that authorizes such take. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Permit No.	Applicant	Species	Location	Activity	Permit action
ES–08832A	Utah State University, Logan, UT.	• Colorado pikeminnow (*Ptychocheilus lucius*). • Bonytail (*Gila elegans*) ..... • Razorback sucker (*Xyrauchen texanus*).	Colorado, New Mexico, and Utah.	Survey, capture, handle, electrofish, tag, track, and perform habitat restoration.	Renew.
ES–053839	SME Environmental Consultants, Durango, CO.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	Arizona, Colorado, New Mexico, and Utah.	Play taped vocalizations for surveys	Renew and amend.
PER2685848	Natural Resources Conservation Service, Grand Junction, CO.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	Colorado	Play taped vocalizations for surveys	New.
PER4748347	Brackett Mays, Durango, CO.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	Colorado and Utah	Play taped vocalizations, capture, handle, and release for surveys.	New.
ES–067729	Kansas State University, Manhattan, KS.	• Colorado pikeminnow (*Ptychocheilus lucius*). • Razorback sucker (*Xyrauchen texanus*). • Topeka shiner (*Notropis topeka (=tristis)*).	Kansas, New Mexico, and Utah.	Survey, capture, electrofish, handle, tag, attach radio transmitters, collect tissue, transport, translocate, captively breed, and research.	Renew and amend.
PER8349103	Matthew Bain, Oakley, KS.	• Lesser prairie-chicken (*Tympanuchus pallidicinctus*).	Colorado, Kansas, New Mexico, and Oklahoma.	Survey and monitor	New.
PER4854259	Cailene Bovee, Bozeman, MT.	• Northern Long-Eared Bat (*Myotis septentrionalis*). • Indiana bat (*Myotis sodalis*) ..... • Gray bat (*Myotis grisescens*) ..... • Tricolored bat (*Perimyotis subflavus*).	Throughout the range of each species in the U.S.	Capture, handle, identify, band, radio tag, swab, collect biological samples, and release.	New.

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 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. 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.

Next Steps

If we decide to issue a permit to an applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Marjorie Nelson,

Acting Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2024–04292 Filed 2–29–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2024–0027; FXIA16710900000–245–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by April 1, 2024.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2024–0027.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2024–0027.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2024–0027; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Timothy MacDonald, by phone at 703–358–2185 or via email at *DMAFR@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:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: San Antonio Zoo, San Antonio, TX; Permit No. PER7750719

The applicant requests a permit to export one live, captive-born black-and-white ruffed lemur (*Varecia variegata variegata*) to Zoo de Granby, Quebec, Canada, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

Applicant: Duke University Lemur Center, Durham, NC; Permit No. PER7799033

The applicant requests authorization to export one live, captive-born black-and-white ruffed lemur (*Varecia variegata variegata*) to Zoo de Granby, Quebec, Canada, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

Applicant: Smithsonian Conservation Biology Institute, Front Royal, VA; Permit No. PER7835252

The applicant requests an amendment to a previously issued permit to export live, captive-born Japanese (red-crowned) crane (*Grus japonensis*) Assiniboine Park Zoo in Manitoba, Canada, for the purpose of enhancing the propagation or survival of the species. The amendment will increase the number of individuals requested from one crane to two cranes. This notification is for a single export.

Applicant: Busch Gardens, Tampa, FL; Permit No. PER7485063

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Common name	Scientific name
Black rhino	*Diceros bicornis.*
Southern white rhinoceros.	*Ceratotherium simum simum.*
African slender-snouted crocodile.	*Crocodylus cataphractus.*
Asian elephant	*Elephas maximus.*
Cheetah	*Acinonyx jubatus.*
Tiger	*Panthera tigris.*
Gorilla	*Gorilla gorilla.*
Orangutan	*Pongo pygmaeus.*
Chimpanzee	*Pan troglodytes.*
Red-fronted lemur	*Eulemur rufus.*
Ring-tailed lemur	*Lemur catta.*
Red-ruffed lemur	*Varecia rubra.*
Grevy's zebra	*Equus grevyi.*
African penguin	*Spheniscus demersus.*
Komodo dragon	*Varanus komodoensis.*

Applicant: Henry Vilas Zoo, Madison, WI; Permit No. PER7746895

The applicant requests to amend their captive-bred wildlife registration under 50 CFR 17.21(g) to remove the Bactrian camel (*Camelus bactrianus*). This notification is for a single amendment.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Timothy MacDonald,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2024–04285 Filed 2–29–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2024–0011]

Notice of Availability of a Final Environmental Impact Statement for Park City Wind LLC's Proposed New England Wind Farm Offshore Massachusetts, Rhode Island, and New York

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability; final environmental impact statement.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of the final environmental impact statement (FEIS) for Park City Wind LLC's (PCW) construction and operations plan (COP) for its proposed New England Wind Farm Project (Project) offshore Massachusetts, Rhode Island, and New York. The FEIS analyzes the potential environmental impacts of the Project as described in the COP (the proposed action) and the alternatives to the proposed action, including the no action alternative. The FEIS will inform BOEM's decision whether to approve, approve with modifications, or disapprove the COP.

ADDRESSES: The FEIS and detailed information about the Project, including the COP, can be found on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/new-england-wind-formerly-vineyard-wind-south.*

FOR FURTHER INFORMATION CONTACT: Lindy Nelson, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (571) 789–6485 or *lindy.nelson@boem.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action: Park City Wind seeks approval to construct, operate, and maintain a wind energy facility and its associated export cables on the Outer Continental Shelf (OCS) offshore Massachusetts, Rhode Island, and New York. The Project would be developed within the range of design parameters outlined in the New England Wind COP, subject to the applicable mitigation measures.

The Project as proposed in the COP would be developed in two phases. The entire Project would include a combined maximum 130 wind turbine generators (WTGs) and electrical service platforms (ESPs, inter-array and inter-link cables connecting the individual WTGs and ESPs, five offshore export cables (two for phase I and three for phase II), onshore substations and interconnection cables connecting to the existing electrical grid in Massachusetts.

The WTGs, offshore substation, and inter-array cables would be located on the OCS approximately 32 kilometers (km) (20 miles) south of Martha's Vineyard and approximately 38 km (24 miles) southwest of Nantucket, within the area defined by Renewable Energy Lease OCS–A 0534. The Project would be adjacent to the Vineyard Wind 1 (VW1) project (OCS–A 0501). The environmental impact statement (EIS) evaluates the potential to utilize unused positions of the VW1 project that VW1 could reassign to the Project. The offshore export cables would be buried below the seabed surface in the OCS and State of Massachusetts-owned submerged lands. The onshore export cables, substations, and grid connections would be in Barnstable, MA.

Alternatives: BOEM considered 15 alternatives when preparing the draft EIS and carried forward three alternatives for further analysis in the FEIS. These three alternatives include the proposed action, one other action alternative, and the no action

alternative. Twelve alternatives were not analyzed in detail because they did not meet the purpose and need for the proposed action or did not meet screening criteria, which are presented in FEIS chapter 2. The screening criteria included consistency with law and regulations; technical and economic feasibility; environmental impacts; and geographic considerations.

Availability of the FEIS: The FEIS, New England Wind COP, and associated information are available on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/new-england-wind-formerly-vineyard-wind-south.* BOEM has distributed digital copies of the FEIS to all parties listed in FEIS appendix M. If you would like a flash drive or paper copy, BOEM will provide one upon request, as long as supplies are available. You may request a flash drive or paper copy of the FEIS by contacting Lindy Nelson at 571–789–6485 or *lindy.nelson@boem.gov.*

Cooperating Agencies: The following Federal agencies and State governmental entities participated as cooperating agencies under the National Environmental Policy Act in the preparation of the FEIS: Bureau of Safety and Environmental Enforcement; U.S. Environmental Protection Agency; National Marine Fisheries Service; U.S. Army Corps of Engineers; U.S. Coast Guard; U.S. Fish and Wildlife Service; New York Department of State; Massachusetts Office of Coastal Zone Management; and Rhode Island Coastal Resources Management Council.

Consulting Parties: Twenty Federal agencies, Tribal Nations, State governmental entities, and organizations participated as consulting parties under the National Historic Preservation Act. The resolution of adverse effects to historic properties from the Project is recorded in a Memorandum of Agreement signed by the Director of BOEM, the Massachusetts State Historic Preservation Officer, the Advisory Council on Historic Preservation, and other invited and concurring signatories.

Authority: 42 U.S.C. 4231 *et seq.* (NEPA, as amended) and 40 CFR 1506.6.

Karen Baker,

Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2024–04303 Filed 2–29–24; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–703 and 731–TA–1661–1663 (Preliminary)]

Glass Wine Bottles From Chile, China, and Mexico; Correction Notice of Determinations

AGENCY: International Trade Commission.

ACTION: Notice; correction.

SUMMARY: Correction is made to the publication number.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 16, 2024 (89 FR 12380) in FR Doc. 2024–03227, on page 12381, in the fourth column, the publication number should be USITC Publication 5493 (February 2024).

Issued: February 26, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–04310 Filed 2–29–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–365–366 and 731–TA–734–735 (Fifth Review)]

Certain Pasta From Italy and Turkey; Institution of Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on certain pasta from Italy and Turkey would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted March 1, 2024. To be assured of consideration, the deadline for responses is April 1, 2024. Comments on the adequacy of responses may be filed with the Commission by May 8, 2024.

FOR FURTHER INFORMATION CONTACT: Alec Resch (202–708–1448), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 24, 1996, the Department of Commerce (''Commerce'') issued countervailing and antidumping duty orders on imports of certain pasta from Italy and Turkey (61 FR 38544). Commerce issued a continuation of the antidumping and countervailing duty orders on imports of certain pasta from Italy and Turkey following Commerce's and the Commission's first five-year reviews, effective November 16, 2001 (66 FR 57703), second five-year reviews, effective October 12, 2007 (72 FR 58052), third five-year reviews, effective September 17, 2013 (78 FR 57129), and fourth five-year reviews, effective April 17, 2019 (84 FR 16002). The Commission is now conducting fifth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Italy and Turkey.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in

characteristics and uses with, the *Subject Merchandise*. In its original and subsequent five-year review determinations, the Commission defined the *Domestic Like Product* as all dry pasta. One Commissioner defined the *Domestic Like Product* differently in the original and expedited first five-year review determinations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original and subsequent five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of dry pasta. One Commissioner defined the *Domestic Industry* differently in the original and expedited first five-year review determinations.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on April 1, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is 5:15 p.m. on May 8, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–592, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b))

in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2017.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and

cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2017, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 27, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–04379 Filed 2–29–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1232 (Enforcement)]

Certain Chocolate Milk Powder and Packaging Thereof; Correction Notice of Institution of Formal Enforcement Proceeding; Correction

AGENCY: U.S. International Trade Commission.

ACTION: Notice; correction.

SUMMARY: Correction is made to the investigation number.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of November 16, 2023 (88 FR 78786–87) in FR Doc. 2023–25279, on page 78786, in the first column, the investigation number should read:

[Investigation No. 337–TA–1232].

Issued: February 26, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–04289 Filed 2–29–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Tax Performance System (TPS)

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), Employment and Training Administration is soliciting comments regarding a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Tax Performance System.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by April 30, 2024.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained at no cost by contacting Keith Ribnick by telephone at 202–693–3652 (this is not a toll-free number) or by email at *Ribnick.Keith@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW, Room S–4519, Washington, DC 20210; by email: *Ribnick.Keith@dol.gov*, or by Fax (202) 693–3975.

FOR FURTHER INFORMATION CONTACT: Keith Ribnick by telephone at 202–693–3652 (these are not toll-free numbers) or by email at *Ribnick.Keith@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Since 1987, states have been required by regulation at 20 CFR part 602 to operate a program to assess their Unemployment Insurance (UI) tax and benefit programs. TPS is designed to assess the major internal UI tax functions by utilizing several methodologies to examine the accuracy of the ETA 581, Contribution Operations Report, OMB approval number 1205–0178, expiring July 31, 2024, and its associated Computed Measures. A two-fold examination contains ''Systems Reviews,'' examining tax systems for the existence of internal controls and the extraction of small samples of those systems' transactions, which are then examined to verify the effectiveness of controls. Section 303(a)(1) of the Social Security Act authorizes this information collection.

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 it is approved by the OMB under the PRA 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 Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0332.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Extension without change.

Title of Collection: Tax Performance System.

Form: TPS.

OMB Control Number: OMB 1205–0332.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 52.

Frequency: Once.

Total Estimated Annual Responses: 52.

Estimated Average Time per Response: 1,716 hours (TPS review 1,711 hrs. + data entry 5 hrs.).

Estimated Total Annual Burden Hours: 89,232 hours.

Total Estimated Annual Other Cost Burden: $ 0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Brent Parton,

Principal Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2024–04388 Filed 2–29–24; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Workforce Flexibility (Workflex) Plan Submission and Reporting Requirements

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Workforce Flexibility (Workflex) Plan Submission and Reporting Requirements.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by April 30, 2024.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Dana Westgren by telephone at 202–693–0285 (this is not a toll-free number), or by email at *westgren.dana.c@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Division of Adult Services and Governance, U.S. Department of Labor, 200 Constitution Avenue NW, Room S4209, Washington, DC 20210; by email: *westgren.dana.c@dol.gov;* or by fax 202–693–3015.

FOR FURTHER INFORMATION CONTACT: Contact Dana Westgren by telephone at 202–693–0285 (this is not a toll-free number) or by email at *westgren.dana.c@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Section 190 of the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128, July 22, 2014) permits states to apply for Workflex waiver authority. The Act and 20 CFR 679.630 provide that the Secretary may grant Workflex waiver authority for up to five years pursuant to a Workflex plan submitted by a state. Under Workflex, governors are granted the authority to approve requests submitted by their local areas to waive certain statutory and regulatory provisions of WIOA Title I programs. States may request waivers from the Secretary of certain requirements of the Wagner-Peyser Act (sections 8–10) as well as certain provisions of the Older American Act of 1965 (OAA) (42 U.S.C. 305d(b)) for state agencies on aging with respect to activities carried out using funds allotted under OAA section 506(b). One of the underlying principles for granting Workflex waivers is that the waivers will result in improved performance outcomes for persons served and that the waiver authority will be granted in consideration of improved performance.

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 it is approved by OMB under the PRA 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 Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Number:1205–0432.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters

not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Extension without change.

Title of Collection: Workflex Plan Submission and Reporting Requirements.

Form: Workforce Flexibility (Workflex) Plan Collection.

OMB Control Number: 1205–0432.

Affected Public: State, local, and Tribal governments.

Estimated Number of Respondents: 5.

Frequency: 5 state plans annually, 20 quarterly reports.

Total Estimated Annual Responses: 25.

Estimated Average Time per Response: 23 hours.

Estimated Total Annual Burden Hours: 235 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Brent Parton,

Principal Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2024–04384 Filed 2–29–24; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Quarterly Narrative Progress Report, Employment and Training Supplemental Budget Request Activities

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 1, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: To monitor the progress of State Workforce Agencies in successfully implementing projects funded through Supplemental Budget Requests, Form ETA 9178 will request information including the funded project's title and purpose, timeline and milestones, and a narrative description of the project implementation status. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 12, 2023 (88 FR 70689).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Quarterly Narrative Progress Report, Employment and Training Supplemental Budget Request Activities.

OMB Control Number: 1205–0517.

Affected Public: State, local and Tribal governments.

Total Estimated Number of Respondents: 57.

Total Estimated Number of Responses: 228.

Total Estimated Annual Time Burden: 1,140 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–04386 Filed 2–29–24; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Contribution Operations

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 1, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: In support of the Unemployment Insurance statutory and regulatory requirements, ETA 581 provides quarterly data on State agencies' volume and performance in wage processing, promptness of liable employer registration, timeliness of filing contribution and wage reports, extent of tax delinquency, and results of the field audit program. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 22, 2023 (88 FR 65406).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Contribution Operations.

OMB Control Number: 1205–0178.

Affected Public: State, local and Tribal governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 212.

Total Estimated Annual Time Burden: 1,590 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–04385 Filed 2–29–24; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2019–0009]

DEKRA Certification Inc.: Application for Expansion of Recognition and Proposed Modification to the NRTL Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of DEKRA Certification Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application. Additionally, OSHA proposes to add one test standard and modify an existing standard on the NRTL List of Appropriate Test Standards.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before March 18, 2024.

ADDRESSES: Submit comments by any of the following methods:

Electronically: Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2019–0009). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Extension of comment period: Submit requests for an extension of the comment period on or before March 18, 2024 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–1911 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that DEKRA Certification Inc., (DEKRA) is applying to expand the current recognition as a NRTL. DEKRA requests the addition of three test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by NRTLs or applicant organizations for initial recognition, as well as for expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including DEKRA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *https://www.osha.gov/dts/otpca/nrtl/index.html.*

DEKRA currently has two facilities (sites) recognized by OSHA for product testing and certification, with headquarters located at: DEKRA Certification Inc., 405 Glenn Drive, Sterling, Virginia 20164. A complete list of DEKRA sites recognized by OSHA is available at *https://www.osha.gov/nationally-recognized-testing-laboratory-program/dekra.*

II. General Background on the Application

DEKRA submitted an application on December 24, 2021 (OSHA–2019–0009–0004), which requested the addition of twenty-two standards to the scope of recognition. DEKRA submitted an amended application, dated June 21, 2023 (OSHA–2019–0009–0003), which requested that OSHA consider three of the twenty-two standards separately. OSHA then moved forward with consideration only of the three standards requested in the June 21, 2023, amended application; it is still evaluating the initial application and will announce the preliminary decision on the remaining nineteen standards in a separate notice. OSHA staff performed a detailed analysis of the application packet for the three standards covered by the June 21, 2023, amended application, and other pertinent information. OSHA staff performed an on-site assessment of DEKRA's Netherlands facility on June 5–7, 2023, in which OSHA assessors found some nonconformances with the requirements of 29 CFR 1910.7. DEKRA has addressed these issues sufficiently, and OSHA staff has preliminarily determined that OSHA should grant the June 21, 2023, amended application.

Table 1, below, lists the three test standards found in DEKRA's June 21, 2023, amended application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED TEST STANDARDS FOR INCLUSION IN DEKRA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 2202	DC Charging Equipment for Electric Vehicles.
UL 2251*	Plugs, Receptacles, and Couplers for Electric Vehicles.
UL 2594	Electric Vehicle Supply Equipment.

*In this notice, OSHA also proposes to add this test standard to the NRTL Program's List of Appropriate Test Standards.

III. Proposal To Add One New Test Standard to the NRTL Program's List of Appropriate Test Standards

Periodically, OSHA will propose to add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to: (1) verify it represents a product category for which OSHA requires certification by a NRTL; (2) verify the document represents a product and not a component; and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of new test standards by: (1) monitoring notifications issued by certain Standards Development Organizations; (2) reviewing applications by NRTLs or applicants seeking recognition to include new test standards in their scopes of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard also covers or it covers a type of product that no standard previously covered.

In this notice, OSHA proposes to add one new test standard to the NRTL Program's list of appropriate test standards. Table 2, below, lists the test standard that is new to the NRTL Program. OSHA preliminarily determines that this test standard is an appropriate test standard. OSHA seeks public comment on this preliminary determination.

TABLE 2—STANDARD OSHA IS PROPOSING TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 2251	Plugs, Receptacles, and Couplers for Electric Vehicles.

IV. Preliminary Findings on the Application

DEKRA submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application files and related material preliminarily indicates that DEKRA can meet the requirements prescribed by 29 CFR 1910.7 for expanding recognition to include the addition of the test standards listed above for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of DEKRA's application.

OSHA also preliminarily determined that the test standard listed above is an appropriate test standard.

OSHA seeks public comment on these preliminary determinations.

V. Public Participation

OSHA welcomes public comment as to whether DEKRA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL and whether the test standard listed above is an appropriate test standard that should be included in the NRTL Program's List of Appropriate Test Standards. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a

longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2019–0009 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**),

OSHA staff will review all comments to the docket submitted in a timely manner and after addressing the issues raised by these comments, make a recommendation to the Assistant Secretary for Occupational Safety and Health on whether to grant, in part, DEKRA's application for expansion of its scope of recognition and to add the test standard listed above to the NRTL Program's List of Appropriate Test Standards. The Assistant Secretary will make the final decision on granting the application and on adding the test standard listed above to the NRTL Program's List of Appropriate Test Standards. In making these decisions, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

VI. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on February 26, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–04387 Filed 2–29–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Geosciences (#1755) Hybrid Meeting.

Date and Time: March 25, 2024; 8:30 a.m. to 5 p.m.; March 26, 2024; 8:30 a.m. to 5 p.m.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314. Hybrid participation is for members and speakers only. Public participants may attend the meeting virtually by accessing the following link: *https://nsf.zoomgov.com/webinar/register/WN_aZeZPArhRC-NP1KEXb04rg.* After registering, you will receive a confirmation email with a unique link to join the meeting.

Type of Meeting: Open.

Contact Person: Simona Gilbert, National Science Foundation, 2415 Eisenhower Avenue, Room C 8047, Alexandria, Virginia 22314; Telephone: 703–292–7216.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda

Monday, March 25, 2024; 8:30 a.m.–5 p.m.

- COI Ethics Briefing
- Call to Order
- AD Updates
- Program Updates
- Agency Updates
- Division/Office Highlights
- Closing Remarks

Tuesday, March 26, 2024; 8:30 a.m.–5 p.m.

- Agency Updates Continued
- NSF Director's Briefing
- AI for Climate Discussion
- Partnerships Discussion
- Future Meetings
- Action Item(s) Discussion
- Closing Remarks

Dated: February 27, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–04396 Filed 2–29–24; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Information and Instructions on Your Reconsideration Rights, RI 38–47, 3206–0237

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Personnel Management (OPM) is proposing an extension to a currently approved information collection: OMB Control Number 3206–0237, RI 38–47, Information and Instructions on Your Reconsideration Rights.

DATES: Comments are encouraged and will be accepted until April 1, 2024.

ADDRESSES: Written comments and recommendations for this proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Office of Personnel Management'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to this information collection activities, please contact: Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *RSPublicationsTeam@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 936–0401.

SUPPLEMENTARY INFORMATION: OPM, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the public with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Agency assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Agency's information collection requirements and provide the requested data in the desired format. OPM is soliciting comments on the proposed information collection request that is described below. The Agency is especially interested in public comment addressing the following issues: (1) whether this collection is necessary to the proper functions of the Agency; (2) whether this information will be processed and used in a timely manner; (3) the accuracy of the burden estimate; (4) ways the Agency can enhance the quality, utility, and clarity of the information to be collected; and (5) ways the Agency can minimize the burden of this collection on the respondents, including through the use of information technology. Written comments received in response to this notice will be considered public records.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Information and Instructions on Your Reconsideration Rights.

OMB Number: 3206–0237.

Affected Public: Individual or Households.

Number of Respondents: 3,100.

Estimated Time per Respondent: 45 minutes.

Total Burden Hours: 2,325 hours.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–04350 Filed 2–29–24; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–193 and CP2024–199]

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:* March 4, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

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).:* MC2024–193 and CP2024–199; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 191 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 16, 2024; [2] *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* March 4, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–04293 Filed 2–29–24; 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).

[2] A technical error resulted in this filing not appearing in the Commission's dockets system as expected. This led to a delay in processing and noticing the filing.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99609; File No. SR–NYSECHX–2024–06]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31(a)(2)(B)

February 26, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 16, 2024, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31(a)(2)(B) regarding Limit Order Price Protection. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31(a)(2)(B) (''Limit Order Price Protection'') to provide for the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

application of Limit Order Price Protection during the Core Trading Session even where a contra-side NBB (NBO) has not been established.

Currently, Rule 7.31(a)(2)(B) provides that a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of $0.15 or a specified percentage away from the National Best Offer (National Best Bid) (''NBO'' and ''NBB,'' respectively),[4] and that Limit Order Price Protection will not be applied to an incoming Limit Order to buy (sell) if there is no NBO (NBB).

The Exchange has recently received requests from market participants to modify this rule so that during the Core Trading Session, Limit Order Price Protection would apply even when no contra-side NBB or NBO has been established. In such cases, market participants have suggested that the Limit Order Price Protection calculation should use an alternate reference price, such as the last consolidated round-lot price of the trading day or the prior trading day's official closing price. That way, even if no contra-side NBB or NBO has been established, the Exchange would still apply Limit Order Price Protection using the best-available alternate reference price, thereby offering market participants greater protections against the execution of Limit Orders with aberrant prices during the Core Trading Session. The Exchange is aware that the Limit Order Price Protection rule on the MIAX Pearl equities exchange (''MIAX Pearl'') currently features such a hierarchy of reference prices, so that Limit Order Price Protection is applied to all Limit Orders, even where no contra-side NBB or NBO has been established.[5]

In light of these requests from market participants, the Exchange now proposes to amend Rule 7.31(a)(2)(B) to provide a hierarchy of reference prices against which Limit Order Price Protection would apply during the Core Trading Session. As in the current rule, during the Core Trading Session, a Limit Order to buy (sell) would be rejected if it is priced at or above (below) the greater of $0.15 or a specified percentage (as set forth in the accompanying table) away from the NBO (NBB). But if such NBO (NBB) has not yet been established, the Exchange would use as the reference price the last consolidated round-lot price of that trading day, or, if none, the prior trading day's Official Closing Price.[6] This proposal is substantively identical to an immediately-effective rule change recently filed by the Exchange's affiliate exchange, NYSE American LLC (''NYSE American'').[7]

As in the NYSE American filing, the Exchange does not propose for this change to apply during the Early and Late Trading Sessions. This is because with respect to both the Early and Late Trading Sessions, there is a higher likelihood that overnight news developments may move the market more than the percentages specified in the Limit Order Price Protection rule. If, in the absence of an NBO (NBB), such percentages were applied to the prior trading day's Official Closing Price, this might lead the Exchange to reject orders that are appropriately trying to establish a quote at the new market level. For this reason, the Exchange believes the current rule should continue to govern during the Early and Late Trading Sessions, such that if there is no contra-side NBO (NBB), Limit Order Price Protection will not be applied.

Accordingly, the Exchange proposes to amend and reorganize Rule 7.31(a)(2)(B) into three sub-sections, with sub-section (i) describing the relevant reference prices during the Core Trading Session, sub-section (ii) describing the relevant reference price during the Early and Late Trading Sessions, and sub-section (iii) describing the balance of the current rule.

Specifically, the Exchange proposes that new sub-section (i) of Rule 7.31(a)(2)(B) would provide that during the Core Trading Session, a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of $0.15 or a specified percentage (as set forth in the accompanying table) away from ''(a) the NBO (NBB), or, if none, (b) the last consolidated round-lot price of that trading day, or, if none, (c) the prior trading day's Official Closing Price.''

The Exchange proposes that new sub-section (ii) of the rule would provide that during the Early and Late Trading Sessions, a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of $0.15 or a specified percentage (as set forth in the accompanying table) away from the NBO (NBB), and that Limit Order Price Protection will not be applied to an incoming Limit Order to buy (sell) if there is no NBO (NBB).

Finally, the Exchange proposes that the balance of the current rule be moved to new sub-section (iii) after the new subtitle ''Applicability.''

The Exchange does not propose to make any other changes to the rule, nor does it propose any changes to the $0.15 or specified percentages used in the calculation of Limit Order Price Protection.

Implementation

The Exchange anticipates implementing the proposed change in the first quarter of 2024 and, in any event, will implement the proposed rule change no later than the end of June 2024. The Exchange will announce the timing of such changes by Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and with Section 6(b)(5),[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest, because the use a substantially similar hierarchy of reference prices for the application of Limit Order Price Protection when no contra-side NBO or

[4] For securities with a reference price between $0.00 and $25.00, the specified percentage is 10%; for securities with a reference price between $25.01 and $50.00, the specified percentage is 5%; and for securities with a reference price greater than $50.00, the specified percentage is 3%.

[5] Under current MIAX Pearl rules, a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of a specified dollar and percentage away from (1) the PBO (PBB), or, if unavailable, (2) the consolidated last sale price disseminated during the Regular Trading Hours on trade date, or, if unavailable, (3) the prior day's Official Closing Price. *See* MIAX Pearl Rule 2614(a)(1)(ix)(A).

[6] The Exchange's proposed hierarchy of reference prices is substantially similar to the hierarchy in the MIAX Pearl rules. The only differences are that the Exchange's proposal (a) would continue to reference the NBO (NBB) instead of the PBO (PBB), as the Exchange's Limit Order Price Protection mechanism has always done; and (b) unlike the MIAX Pearl rule, which permits an odd lot to serve as ''the consolidated last sale price disseminated during the Regular Trading Hours on trade date,'' the Exchange's proposal would instead use the last consolidated round-lot price of that trading day, which the Exchange believes is a better indication of actual market conditions. Both the MIAX Pearl rule and the Exchange's proposed rule would use the prior trading day's Official Closing Price as the reference price of last resort.

[7] *See* Securities Exchange Act Release No. 99566 (SR–NYSEAMER–2024–11).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

NBB has been established is currently in effect on MIAX Pearl and is the subject of an immediately-effective rule filing on NYSE American, and therefore is not novel.[10] The Exchange further believes that the proposed change would enhance the Exchange's Limit Order Price Protection mechanism during the Core Trading Session, because it would apply using the best-available alternate reference price when a contra-side NBO or NBB has not been established, thereby offering market participants greater protection from aberrant prices and improving continuous trading and price discovery. In addition, the proposal to enhance Limit Order Price Protection by adding alternative reference prices to apply to the Core Trading Session would assist with the maintenance of fair and orderly markets because such mechanisms protect investors from potentially receiving executions away from the prevailing market prices.

The Exchange also believes that it would protect investors and the public interest for the Exchange to maintain the current Limit Order Price Protection rule for the Early and Late Trading Sessions. With respect to both the Early and Late Trading Sessions, there is a higher likelihood that overnight news developments may move the market more than the percentages specified in the Limit Order Price Protection rule. If, in the absence of an NBO (NBB), such percentages were applied to the prior trading day's Official Closing Price, this might lead the Exchange to reject orders that are appropriately trying to establish a quote at the new market level. For this reason, the Exchange believes that, for the protection of investors and the public interest, the current rule should continue to govern during the Early and Late Trading Sessions, such that if there is no contra-side NBO (NBB), Limit Order Price Protection will not be applied.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would not address competitive issues but rather would enhance the Exchange's Limit Order Price Protection mechanism, to further protect market participants from aberrant prices and improve continuous trading and price discovery.

[10] *See supra* notes 5 and 6.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[13]

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)[14] 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:

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 15 U.S.C. 78s(b)(2)(B).

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSECHX–2024–06 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–NYSECHX–2024–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSECHX–2024–06 and should be submitted on or before March 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–04300 Filed 2–29–24; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99599; File No. SR–MEMX–2024–04]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Low Priced Stock Strike Price Interval Program

February 26, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 20, 2024, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to adopt a Low Priced Stock Strike Price Interval Program. The text of the proposed rule change is provided in Exhibit 5.

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 19.5 to adopt a Low Priced Stock Strike Price Interval Program. Miami International Securities Exchange, LLC (''MIAX'') recently received approval to amend its Rule 404 to implement a new strike interval program for stocks that are priced less than $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three preceding calendar months.[5] At this time, the Exchange proposes to adopt rules substantively identical to MIAX in proposed Rule 19.5, Interpretation and Policy .09, amend Rule 19.5(d) to add clarifying text, and amend Rule 19.5 Interpretation and Policy .05(f) to harmonize the table within that Rule to the proposed rule text.

Currently, Rule 19.5 describes the process and procedures for listing and trading series of options on the Exchange. Rule 19.5 provides for a $2.50 Strike Price Program, where the Exchange may select up to 200 option classes on individual stocks for which the interval of strike prices will be $2.50 where the strike price is greater than $25 but less than $50.[6] Rule 19.5, Interpretation and Policy .02 also provides for a $1 Strike Price Program, where the interval between strike prices of series of options on individual stocks may be $1.00 or greater provided the strike price is $50.00 or less, but not less than $1.00.[7] Additionally, Rule 19.5, Interpretation and Policy .06 provides for a ''$0.50 Strike Program.'' The interval of strike prices of series of options on individual stocks may be $0.50 or greater beginning at $0.50 where the strike price is $5.50 or less, but only for options classes whose underlying security closed at or below $5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation (''OCC'') during the preceding three calendar months. The listing of $0.50 strike prices is limited to options classes overlying no more than 20 individual stocks as specifically designated by the Exchange. The Exchange may list $0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $0.50 Strike Program under their respective rules. A stock shall remain in the $0.50 Strike Program until otherwise designated by the Exchange.[8] The Exchange proposes to adopt a new strike interval program for stocks that are not in the aforementioned $0.50 Strike Program (or the Short Term Option Series Program) [9] and that close below $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three preceding calendar months. The $0.50 Strike Program considers stocks that have a closing price at or below $5.00 whereas the Exchange's proposal will consider stocks that have a closing price below $2.50. Currently, there is a subset of stocks that are not included in the $0.50 Strike Program as a result of the limitations of that program which provides that the listing of $0.50 strike prices is limited to option classes overlying no more than 20 individual stocks as specifically designated by the Exchange and requires a national average daily volume that equals or exceeds 1,000 contracts per day as determined by OCC during the preceding three calendar months.[10] Therefore, the Exchange is proposing to implement a new strike interval program termed the ''Low Priced Stock Strike Price Interval Program.''

To be eligible for the inclusion in the Low Priced Stock Strike Price Interval Program, an underlying stock must (1) close below $2.50 in its primary market on the previous trading day; and (2) have an average daily trading volume of at least 1,000,000 shares per day for the three preceding calendar months. The Exchange notes that there is no limit to the number of classes that will be eligible for inclusion in the proposed program, provided, of course, that the underlying stocks satisfy both the price and average daily trading volume requirements of the proposed program. The Exchange also proposes that after a stock is added to the Low Priced Stock Strike Price Interval Program, the Exchange may list $0.50 strike price intervals from $0.50 up to $2.00.[11] For the purpose of adding strikes under the Low Priced Stock Strike Price Interval

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4.

[5] *See* Securities Exchange Act Release No. 98917 (November 13, 2023), 88 FR 80361 (November 17, 2023) (SR–MIAX–2023–36) (Order Approving a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading).

[6] *See* Rule 19.5, Interpretation and Policy .03(a).

[7] *See* Rule 19.5, Interpretation and Policy .02(a).

[8] *See* Rule 19.5, Interpretation and Policy .06.

[9] *See* Rule 19.5, Interpretation and Policy .05. The proposed rule change also makes two non-substantive changes to correct inadvertent errors in the introductory paragraph of Rule 19.5, Interpretation and Policy .05, by adding the word ''Options'' in the third sentence so that ''Short Term Weekly Expirations'' becomes ''Short Term Options Weekly Expirations'', and changing the term ''Option'' to ''Options'' in the second to last sentence.

[10] *See* Rule 19.5, Interpretation and Policy .06.

[11] While the Exchange may list new strikes on underlying stocks that meet the eligibility requirements of the new program, the Exchange will exercise its discretion and will not list strikes on underlying stocks the Exchange believes are subject to imminent delisting from their primary exchange.

Program, the ''price of the underlying stock'' is measured in the same way as ''the price of the underlying security'' is measured as set forth in Section 3(g) of the Options Listing Procedures Plan (''OLPP''). Further, no additional series in $0.50 intervals may be listed if the underlying stock closes at or above $2.50 in its primary market. Additional series in $0.50 intervals may not be added until the underlying stock again closes below $2.50. The Exchange's proposal addresses a gap in strike coverage for low priced stocks. The $0.50 Strike Program considers stocks that close below $5.00 and limits the number of option classes listed to no more than 20 individual stocks (provided that the open interest criteria is also satisfied). Whereas, the Exchange's proposal has a narrower focus, with respect to the underlying's stock price, and is targeted on those stocks that close below $2.50 and does not limit the number of stocks that may participate in the program (provided that the average daily trading volume is also satisfied). The Exchange does not believe that any market disruptions will be encountered with the addition of these new strikes. The Exchange represents that it has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Low Priced Stock Strike Price Interval Program.

The Exchange believes that the program's average daily trading volume requirement of 1,000,000 shares is a reasonable threshold to ensure adequate liquidity in eligible underlying stocks as it is substantially greater than the thresholds used for listing options on equities, American Depository Receipts (''ADRs''), and broad-based indexes. Specifically, underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange must meet certain criteria as determined by the Exchange. One of those requirements is that trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding 12 months.[12] Rule 19.3(f) provides the criteria for listing options on ADRs if they meet certain criteria and guidelines set forth in Rule 19.3. One of the requirements is that the average daily trading volume for the security in the U.S. markets over the three months preceding the selection of the ADR for options trading is 100,000 or more shares.[13] Finally, the Exchange may trade options on a broad-based index pursuant to Rule 19b–4(e) of the Securities Exchange Act of 1934 (the ''Act'') provided a number of conditions are satisfied. One of those conditions is that each component security that accounts for at least 1% of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six-month period.[14]

Additionally, the Exchange proposes to add non-substantive clarifying language to Rule 19.5(d), which defines the interval between strike prices of series of options on individual stocks. Specifically, in light of the multiple strike intervals allowed under various provisions of Rule 19.5 and the Interpretations and Policies thereto, the Exchange proposes to insert ''*except as otherwise provided in this Rule and the Interpretations and Policies hereto . . .*'' at the beginning of Rule 19.5(d). The Staff believes this will eliminate any potential confusion and further clarify that other strikes not mentioned in 19.5(d) are permissible under the Exchange's Rules.[15]

Lastly, the Exchange proposes to amend the table in Rule 19.5, Interpretation and Policy .05(f) to insert a new column to harmonize the Exchange's proposal to the strike intervals for Short Term Options Series as described in Rule 19.5, Interpretation and Policy .05. The table in Rule 19.5, Interpretation and Policy .05(f) is intended to limit the intervals between strikes for multiply listed equity options within the Short Term Options Series program that have an expiration date more than twenty-one days from the listing date. Specifically, the table defines the applicable strike intervals for options on underlying stocks given the closing price on the primary market on the last day of the calendar quarter, and a corresponding average daily volume of the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter.[16] However, the lowest share price column is titled ''less than $25.'' The Exchange now proposes to insert a column titled ''Less than $2.50'' and to set the strike interval at $0.50 for each average daily volume tier represented in the table. Also, the Exchange proposes to amend the heading of the column currently titled ''Less than $25,'' to ''$2.50 to less than $25'' as a result of the adoption of the new proposed column, ''Less than $2.50.'' The Exchange believes this change will remove any potential conflict between the strike intervals under the Short Term Options Series Program and those described herein under the Exchange's proposal.

The Exchange recognizes that its proposal will introduce new strikes in the marketplace and further acknowledges that there has been significant effort to curb strike proliferation. This initiative has been spearheaded by the Nasdaq BX who filed an initial proposal focused on the removal, and prevention of the listing, of strikes which are extraneous and do not add value to the marketplace (the ''Strike Interval Proposal'').[17] For example, the Exchange filed a proposal focused on the removal, and prevention of the listing, of strikes which are extraneous and do not add value to the marketplace (the ''Strike Interval Proposal'').[18] The Strike Interval Proposal was intended to remove repetitive and unnecessary strike listings across the weekly expiries. Specifically, the Strike Interval Proposal aimed to reduce the density of strike intervals that would be listed in the later weeks, by creating limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.[19] The Strike Interval Proposal took into account OCC customer-cleared volume, using it as an appropriate proxy for demand. The Strike Interval Proposal was designed to maintain strikes where there was customer demand and eliminate strikes where there was not demand. At the time of its proposal, Nasdaq BX estimated that the Strike Interval Proposal would reduce the number of listed strikes in the options market by approximately 81,000 strikes.[20] The Exchange proposes to amend the table to define the strike interval at $0.50 for underlying stocks with a share price of less than $2.50. The Exchange believes this amendment will harmonize the Exchange's proposal with the Strike Interval Proposal described above.

The Exchange recognizes that its proposal will moderately increase the total number of option series available

[12] *See* Rule 19.3(b)(4).

[13] *See* Rule 19.3(f)(3)(B).

[14] *See* Rule 29.3(b)(7).

[15] The Exchange notes that this introductory language appears in MIAX's similar Rule 404(d).

[16] *See* Securities Exchange Release Act No. 91125 (February 21, 2021), 86 FR 10375 (February 19, 2021) (SR–BX–2020–032) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Options 4, Section 5, To Limit Short Term Options Series Intervals Between Strikes That Are Available for Quoting and Trading on BX).

[17] *See* Securities Exchange Act No. 91225 (February 12, 2021), 86 FR 10375 (February 12, 2021) (SR–BX–2020–032) (BX Strike Approval Order); See also BX Options Strike Proliferation Proposal (February 25, 2021) available at: *https://www.nasdaq.com/solutions/bx-options-strike-proliferation-proposal.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

on the Exchange. However, the Exchange's proposal is designed to only add strikes where there is investor demand [21] which will improve market quality. Under the requirements for the Low Priced Stock Strike Price Interval Program as described herein, the Exchange determined that as of August 9, 2023, 106 symbols met the proposed criteria. Of those symbols, the Exchange notes that 36 were in the $1 Strike Price Interval Program with $1.00 and $2.00 strikes listed. Under the Exchange's proposal, the $0.50 and $1.50 strikes for these symbols would be added for the current expiration terms. The remaining 70 symbols eligible under the proposal would have $0.50, $1.00, $1.50 and $2.00 strikes added to their current expiration terms. Therefore, the Exchange notes that for the 106 symbols eligible for the Low Priced Stock Strike Price Interval Program, a total of approximately 3,250 options would be added. The Exchange is still in the process of listing underlying option symbols in phases in connection with the launch of MEMX Options, but once fully rolled out, expects to list over 1,000,000 options, therefore, the additional options that would be listed under this proposal would represent a relatively minor increase of approximately 0.325% in the number of options listed.

The Exchange does not believe that its proposal contravenes the industry's efforts to curtail unnecessary strikes. The Exchange's proposal is targeted to only underlying stocks that close at less than $2.50 and that also meet the average daily trading volume requirement. Additionally, because the strike increment is $0.50 there are only a total of four strikes that may be listed under the program ($0.50, $1.00, $1.50, and $2.00) for an eligible underlying stock. Finally, if an eligible underlying stock is in another program (*e.g.,* the $0.50 Strike Program or the $1 Strike Price Interval Program) the number of strikes that may be added is further reduced if there are pre-existing strikes as part of another strike listing program. Therefore, the Exchange does not believe that it will list any unnecessary or repetitive strikes as part of its program, and that the strikes that will be listed will improve market quality and satisfy investor demand.

The Exchange further believes that the Options Price Reporting Authority (''OPRA''), has the necessary systems capacity to handle any additional messaging traffic associated with this proposed rule change. The Exchange also believes that Members will not have a capacity issue as a result of the proposed rule change. Finally, the Exchange believes that the additional options will serve to increase liquidity, provide additional trading and hedging opportunities for all market participants, and improve market quality.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) 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 its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system as the Exchange has identified a subset of stocks that are trading under $2.50 and do not have meaningful strikes available. For example, on August 9, 2023, symbol SOND closed at $0.50 and had open interest of over 44,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[25] Currently the lowest strike listed is for $2.50, making the lowest strike 400% away from the closing stock price. Another symbol, CTXR, closed at $0.92 on August 9, 2023, and had open interest of 63,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[26] Similarly, the lowest strike listed is for $2.50, making the lowest strike more than 170% away from the closing stock price. Currently, such products have no at-the-money options, as well as no in-the-money calls or out-of-the money puts. The Exchange's proposal will provide additional strikes in $0.50 increments from $0.50 up to $2.00 to provide more meaningful trading and hedging opportunities for this subset of stocks. Given the increased granularity of strikes as proposed under the Exchange's proposal, out-of-the-money puts and in-the-money calls will be created. The Exchange believes this will allow market participants to tailor their investment and hedging needs more effectively.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by adding strikes that improves market quality and satisfies investor demand. The Exchange does not believe that the number of strikes that will be added under the program will negatively impact the market. Additionally, the proposal does not run counter to the efforts undertaken by the industry to curb strike proliferation as that effort focused on the removal and prevention of extraneous strikes where there was no investor demand. The Exchange's proposal requires the satisfaction of an average daily trading volume threshold in addition to the underlying stock closing at a price below $2.50 to be eligible for the program. The Exchange believes that the average daily trading volume threshold of the program ensures that only strikes with investor demand will be listed and fills a gap in strike interval coverage as described above. Further, being that the strike interval is $0.50, there are only a maximum of four strikes that may be added ($0.50, $1.00, $1.50, and $2.00). Therefore, the Exchange does not believe that its proposal will undermine any previous efforts to eliminate repetitive and unnecessary strikes in any fashion.

The Exchange believes that the proposed program's average daily trading volume threshold promotes just and equitable principles of trade and removes impediments to and perfects

[21] *See* proposed Rule 19.5, Interpretation and Policy .09(a), which requires that an underlying stock must (1) close below $2.50 in its primary market on the previous trading day; and (2) have an average daily trading volume of at least 1,000,000 shares per day for the three preceding calendar months.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] *Id.*

[25] *See* Yahoo! Finance, *https://finance.yahoo.com/quote/SOND/history?p=SOND* (last visited August 10, 2023).

[26] *Id.*

the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as it is designed to permit only those stocks with demonstrably high levels of trading activity to participate in the program. The Exchange notes that the proposed program's average daily trading volume requirement is substantially greater than the average daily trading requirement currently in place on the Exchange for options on equity underlyings,[27] ADRs,[28] and broad-based indexes.[29]

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[30] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change allows the Exchange to respond to customer demand to provide meaningful strikes for low priced stocks. The Exchange does not believe that the proposed rule would create any capacity issue or negatively affect market functionality. Additionally, the Exchange represents that it has the necessary systems capacity to support the new options series and handle additional messaging traffic associated with this proposed rule change. The Exchange also believes that its Members will not experience any capacity issues as a result of this proposal. In addition, the Exchange represents that it believes that additional strikes for low priced stocks will serve to increase liquidity available as well as improve price efficiency by providing more trading opportunities for all market participants. The Exchange believes that the proposed rule change will benefit investors by giving them increased opportunities to execute their investment and hedging decisions.

The Exchange believes that the proposal to add non-substantive clarifying language to Rule 19.5(d), which defines the interval between strike prices of series of options on individual stocks, and make other non-substantive corrective edits to Rule 19.5, promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as it is designed to eliminate potential Member confusion.

Finally, the Exchange believes its proposal is designed to prevent fraudulent and manipulative acts and practices as options may only be listed on underlyings that satisfy the listing requirements of the Exchange as described in 19.3. Specifically, Rule 19.3(a) requires that underlying securities for which put or call option contracts are approved for listing and trading on the Exchange must meet the following criteria: (1) the security must be registered with the Commission and be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Act; (2) the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded. Additionally, Rule 19.3(b) provides that, subject to other factors the Exchange may consider, an underlying security will not be selected for options transactions unless: (1) there are a minimum of 7,000,000 shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Act; (2) there are a minimum of 2,000 holders of the underlying security; (3) the issuer is in compliance with any applicable requirements of the Act; and (4) trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding 12 months. The Exchange's proposal does not impact the eligibility of an underlying stock to have options listed on it, but rather addresses only the listing of new additional option classes on an underlying listed on the Exchange in accordance with the Exchange's listings rules. As such, the Exchange believes that the listing requirements described in Rule 19.3 address potential concerns regarding possible manipulation. Additionally, in conjunction with the proposed average daily volume requirement described herein, the Exchange believes any possible market manipulation is further mitigated.

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 its proposed rule change will impose any burden on intramarket competition as the Rules of the Exchange apply equally to all Members and all Members may trade the new proposed strikes if they so choose. Specifically, the Exchange believes that investors and market participants will significantly benefit from the availability of finer strike price intervals for stocks priced below $2.50, which will allow them to tailor their investment and hedging needs more effectively. The Exchange's proposal is substantively identical to MIAX Interpretations and Policies .11 and .12 to Rule 404.

The Exchange does not believe that its proposed rule change will impose any burden on intermarket competition, as nothing prevents other options exchanges from proposing similar rules to list and trade options on low priced stocks. Rather the Exchange believes that its proposal will promote intermarket competition, as the Exchange's proposal will result in additional opportunities for investors to achieve their investment and trading objectives, to the benefit of investors, market participants, and the marketplace in general.

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

Pursuant to Section 19(b)(3)(A) of the Act[31] and Rule 19b–4(f)(6)[32] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[33]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[34] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public

[27] *See supra* note 12.

[28] *See supra* note 13.

[29] *See supra* note 14.

[30] 15 U.S.C. 78f(b)(1).

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(6).

[33] In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 17 CFR 240.19b–4(f)(6)(iii).

interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes it has approved a proposed rule change substantially identical to the one proposed by the Exchange.[35] The proposed change raises no novel legal or regulatory issues. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[36]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MEMX–2024–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MEMX–2024–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MEMX–2024–04 and should be submitted on or before March 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Sherry R. Haywood,

Assistant Secretary.

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[35] *See supra* note 5.

[36] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99603; File No. SR–NYSE–2024–09]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31(a)(2)(B)

February 26, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 16, 2024, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31(a)(2)(B) regarding Limit Order Price Protection. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31(a)(2)(B) (''Limit Order Price Protection'') to provide for the application of Limit Order Price Protection during the Core Trading Session even where a contra-side NBB (NBO) has not been established.

Currently, Rule 7.31(a)(2)(B) provides that a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of $0.15 or a specified percentage away from the National Best Offer (National Best Bid) (''NBO'' and ''NBB,'' respectively),[4] and that Limit Order Price Protection will not be applied to an incoming Limit Order to buy (sell) if there is no NBO (NBB).

The Exchange has recently received requests from market participants to modify this rule so that during the Core Trading Session, Limit Order Price Protection would apply even when no contra-side NBB or NBO has been established. In such cases, market

[4] For securities with a reference price between $0.00 and $25.00, the specified percentage is 10%; for securities with a reference price between $25.01 and $50.00, the specified percentage is 5%; and for securities with a reference price greater than $50.00, the specified percentage is 3%.

participants have suggested that the Limit Order Price Protection calculation should use an alternate reference price, such as the last consolidated round-lot price of the trading day or the prior trading day's official closing price. That way, even if no contra-side NBB or NBO has been established, the Exchange would still apply Limit Order Price Protection using the best-available alternate reference price, thereby offering market participants greater protections against the execution of Limit Orders with aberrant prices during the Core Trading Session. The Exchange is aware that the Limit Order Price Protection rule on the MIAX Pearl equities exchange (''MIAX Pearl'') currently features such a hierarchy of reference prices, so that Limit Order Price Protection is applied to all Limit Orders, even where no contra-side NBB or NBO has been established.[5]

In light of these requests from market participants, the Exchange now proposes to amend Rule 7.31(a)(2)(B) to provide a hierarchy of reference prices against which Limit Order Price Protection would apply during the Core Trading Session. As in the current rule, during the Core Trading Session, a Limit Order to buy (sell) would be rejected if it is priced at or above (below) the greater of $0.15 or a specified percentage (as set forth in the accompanying table) away from the NBO (NBB). But if such NBO (NBB) has not yet been established, the Exchange would use as the reference price the last consolidated round-lot price of that trading day, or, if none, the prior trading day's Official Closing Price.[6] This proposal is substantively identical to an immediately-effective rule change recently filed by the Exchange's affiliate exchange, NYSE American LLC (''NYSE American'').[7]

As in the NYSE American filing, the Exchange does not propose for this change to apply during the Early Trading Session, during which the Exchange trades only UTP Securities.[8] This is because with respect to the Early Trading Session, there is a higher likelihood that overnight news developments may move the market more than the percentages specified in the Limit Order Price Protection rule. If, in the absence of an NBO (NBB), such percentages were applied to the prior trading day's Official Closing Price, this might lead the Exchange to reject orders that are appropriately trying to establish a quote at the new market level. For this reason, the Exchange believes the current rule should continue to govern during the Early Trading Session, such that if there is no contra-side NBO (NBB) for a Limit Order in a UTP Security, Limit Order Price Protection will not be applied.

Accordingly, the Exchange proposes to amend and reorganize Rule 7.31(a)(2)(B) into three sub-sections, with sub-section (i) describing the relevant reference prices during the Core Trading Session, sub-section (ii) describing the relevant reference price during the Early Trading Session, and sub-section (iii) describing the balance of the current rule.

Specifically, the Exchange proposes that new sub-section (i) of Rule 7.31(a)(2)(B) would provide that during the Core Trading Session, a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of $0.15 or a specified percentage (as set forth in the accompanying table) away from ''(a) the NBO (NBB), or, if none, (b) the last consolidated round-lot price of that trading day, or, if none, (c) the prior trading day's Official Closing Price.''

The Exchange proposes that new sub-section (ii) of the rule would provide that during the Early Trading Sessions, a Limit Order in a UTP Security to buy (sell) will be rejected if it is priced at or above (below) the greater of $0.15 or a specified percentage (as set forth in the accompanying table) away from the NBO (NBB), and that Limit Order Price Protection will not be applied to an incoming Limit Order in a UTP Security to buy (sell) if there is no NBO (NBB).

Finally, the Exchange proposes that the balance of the current rule be moved to new sub-section (iii) after the new subtitle ''Applicability.''

The Exchange does not propose to make any other changes to the rule, nor does it propose any changes to the $0.15 or specified percentages used in the calculation of Limit Order Price Protection.

Implementation

The Exchange anticipates implementing the proposed change in the first quarter of 2024 and, in any event, will implement the proposed rule change no later than the end of June 2024. The Exchange will announce the timing of such changes by Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and with Section 6(b)(5),[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest, because the use a substantially similar hierarchy of reference prices for the application of Limit Order Price Protection when no contra-side NBO or NBB has been established is currently in effect on MIAX Pearl and is the subject of an immediately-effective rule filing on NYSE American, and therefore is not novel.[11] The Exchange further believes that the proposed change would enhance the Exchange's Limit Order Price Protection mechanism during the Core Trading Session, because it would apply using the best-available alternate reference price when a contra-side NBO or NBB has not been established, thereby offering market participants greater protection from aberrant prices and improving continuous trading and price discovery. In addition, the proposal to enhance Limit Order Price Protection by adding alternative

[5] Under current MIAX Pearl rules, a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of a specified dollar and percentage away from (1) the PBO (PBB), or, if unavailable, (2) the consolidated last sale price disseminated during the Regular Trading Hours on trade date, or, if unavailable, (3) the prior day's Official Closing Price. *See* MIAX Pearl Rule 2614(a)(1)(ix)(A).

[6] The Exchange's proposed hierarchy of reference prices is substantially similar to the hierarchy in the MIAX Pearl rules. The only differences are that the Exchange's proposal (a) would continue to reference the NBO (NBB) instead of the PBO (PBB), as the Exchange's Limit Order Price Protection mechanism has always done; and (b) unlike the MIAX Pearl rule, which permits an odd lot to serve as ''the consolidated last sale price disseminated during the Regular Trading Hours on trade date,'' the Exchange's proposal would instead use the last consolidated round-lot price of that trading day, which the Exchange believes is a better indication of actual market conditions. Both the MIAX Pearl rule and the Exchange's proposed rule would use the prior trading day's Official Closing Price as the reference price of last resort.

[7] *See* Securities Exchange Act Release No. 99566 (SR–NYSEAMER–2024–11).

[8] As set out in Rule 7.34(a)(1), only UTP Securities are eligible to trade in the Early Trading Session. ''UTP Security'' is defined in Rule 1.1(cc) as a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* notes 5 and 6.

reference prices to apply to the Core Trading Session would assist with the maintenance of fair and orderly markets because such mechanisms protect investors from potentially receiving executions away from the prevailing market prices.

The Exchange also believes that it would protect investors and the public interest for the Exchange to maintain the current Limit Order Price Protection rule for the Early Trading Session, during which the Exchange trades only UTP Securities. With respect to the Early Trading Session, there is a higher likelihood that overnight news developments may move the market more than the percentages specified in the Limit Order Price Protection rule. If, in the absence of an NBO (NBB), such percentages were applied to the prior trading day's Official Closing Price, this might lead the Exchange to reject orders that are appropriately trying to establish a quote at the new market level. For this reason, the Exchange believes that, for the protection of investors and the public interest, the current rule should continue to govern during the Early Trading Session, such that if there is no contra-side NBO (NBB) for a Limit Order in a UTP Security, Limit Order Price Protection will not be applied.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would not address competitive issues but rather would enhance the Exchange's Limit Order Price Protection mechanism, to further protect market participants from aberrant prices and improve continuous trading and price discovery.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[14]

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) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2024–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2024–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2024–09 and should be submitted on or before March 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–04297 Filed 2–29–24; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99604; File No. SR–ISE–2024–06]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change To Amend the Short Term Option Series Program

February 26, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2024, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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 amend the Short Term Option Series Program.

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

The Exchange proposes to amend Supplementary Material .03 of Options 4, Section 5, ''Series of Options Contracts Open for Trading.'' The Exchange proposes to expand the Short Term Option Series program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on iShares Russell 2000 ETF (IWM), specifically permitting two expiration dates for the proposed Tuesday and Thursday expirations in IWM.

Currently, Table 1 in Supplementary Material .03 to Options 4, Section 5 specifies each symbol that qualifies as a Short Term Option Daily Expiration.[3] Today, Table 1 permits the listing and trading of Monday Short Term Option Daily Expirations and Wednesday Short Term Option Daily Expirations for IWM. At this time, the Exchange proposes to expand the Short Term Option Series Program to permit the listing and trading of no more than a total of two IWM Short Term Option Daily Expirations beyond the current week for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time.[4] The listing and trading of Tuesday and Thursday Short Term Option Daily Expirations would be subject to Supplementary Material .03 of Options 4, Section 5.

Today, Tuesday Short Term Option Daily Expirations in SPDR S&P 500 ETF Trust (SPY) and the INVESCO QQQ Trust℠, Series 1 (QQQ) may open for trading on any Monday or Tuesday that is a business day series of options on the symbols provided in Table 1 that expire at the close of business on each of the next two Tuesdays that are business days and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire (''Tuesday Short Term Option Expiration Date'').[5] Also, today, Thursday Short Term Option Daily Expirations in SPY and QQQ may open for trading on any Tuesday or Wednesday that is a business day series of options on the symbols provided in Table 1 that expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire (''Wednesday Short Term Option Expiration Date'').

In the event that options on IWM expire on a Tuesday or Thursday and that Tuesday or Thursday is a business day in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. With this proposal, the Exchange would be able to open for trading series of options on IWM that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days beyond the current week and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire.[6]

The interval between strike prices for the proposed Tuesday and Thursday IWM Short Term Option Daily Expirations will be the same as those for Tuesday and Thursday IWM Short Term Option Daily Expirations in SPY and QQQ, applicable to the Short Term Option Series Program.[7] Options 4, Section 5(e) provides that, notwithstanding any other provision regarding the interval of strike prices of series of options on Exchange-Traded Fund Shares in Options 4, Section 5, the interval of strike prices on options on IWM will be $1 or greater.[8] Further, Options 4, Section 5(f) provides that, notwithstanding Section 5(e) of Options 4, the Exchange may open for trading series at $0.50 or greater strike price intervals where the strike price is less than $75 and $1.00. Specifically, the Tuesday and Thursday IWM Short Term Option Daily Expirations will have a $0.50 strike interval minimum. As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Tuesday and Thursday IWM Short Term Option Daily Expiration series will be P.M.-settled.

Pursuant to Options 1, Section 1(a)(49),[9] with respect to the Short Term Option Series Program, a Tuesday or Thursday expiration series shall expire on the first business day immediately prior to that Tuesday or Thursday, *e.g.,* Monday or Wednesday of that week,

[3] The Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays in which standard expiration options series, Monthly Options Series, or Quarterly Options Series. Of these series of options, the Exchange may have no more than a total of five Short Term Option Expiration Dates. In addition, the Exchange may open for trading series of options on certain symbols that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days beyond the current week and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire (''Short Term Option Daily Expirations''). *See* Supplementary .03 to Options 4, Section 5.

[4] The Exchange would amend the Tuesday and Thursday expirations for IWM in Table 1 in Supplementary Material .03 to Options 4, Section 5 from ''0'' to ''2'' to permit Tuesday and Thursday expirations for options on IWM listed pursuant to the Short Term Option Series. The Exchange notes that Cboe Exchange, Inc. (''Cboe'') began listing Tuesday and Thursday expirations in the Russell 2000 Index Weeklys® (''RUTW'') and Mini-Russell 2000 Index Weeklys® (''MRUT'') on January 8, 2024.

[5] *See* Supplementary Material .03 to Options 4, Section 5.

[6] Today, IWM may trade on Mondays and Wednesdays, in addition to Fridays, as is the case for all options series.

[7] *See* ISE Supplementary Material .03(e) to Options 4, Section 5.

[8] Options on SPY, iShares Core S&P 500 ETF (''IVV''), QQQ, IWM, and the SPDR Dow Jones Industrial Average ETF (''DIA'') are also subject to Options 4, Section 5(e) strike intervals.

[9] Options 1, Section 1(a)(49) provides, ''The term 'Short Term Option Series' means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday, or Friday of the following business week that is a business day, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.''

respectively, if the Tuesday or Thursday is not a business day.

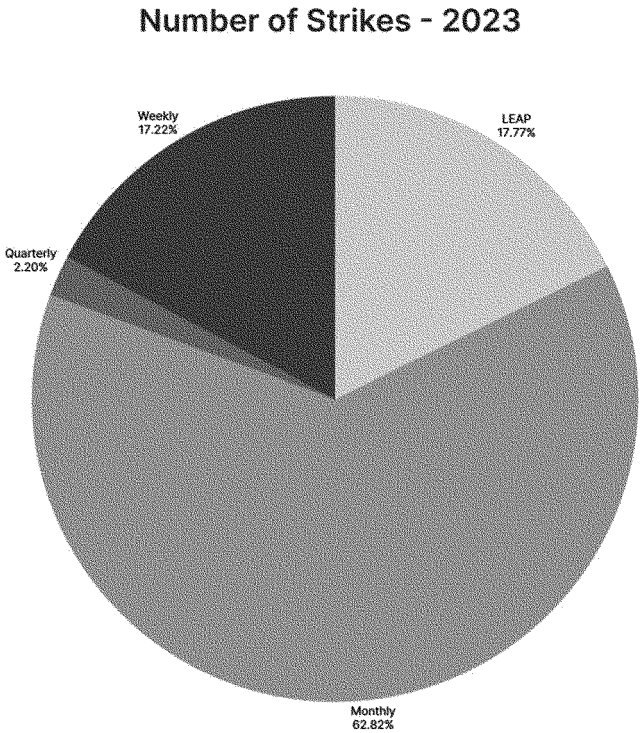
Currently, for each option class eligible for participation in the Short Term Option Series Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.[10] The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.[11] This thirty (30) series restriction would apply to Tuesday and Thursday IWM Short Term Option Daily Expiration series as well.

With this proposal, Tuesday and Thursday IWM Expirations would be treated the same as Tuesday and Thursday Expirations in SPY and QQQ. With respect to monthly option series, Short Term Option Daily Expirations expire in the same week in which monthly option series on the same class expire.[12] Further, as is the case today with other Tuesday and Thursday Short Term Option Daily Expirations, the Exchange would not permit Tuesday and Thursday Short Term Option Daily Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire.[13] Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days beyond the current week and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire.

The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled Tuesday and Thursday IWM Short Term Option Daily Expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Tuesday and Thursday Short Term Option Daily Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire Tuesday and Thursday for SPY and QQQ and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Tuesday and Thursday for SPY and QQQ.

Impact of Proposal

The Exchange notes that listings in the Short Term Option Series Program comprise a significant part of the standard listing in options markets. The below diagram demonstrates the percentage of weekly listings as compared to monthly, quarterly, and Long-Term Option Series in 2023 in the options industry.[14] The Exchange notes that during this time period all options exchanges mitigated weekly strike intervals.



Similar to SPY and QQQ, the Exchange would limit the number of Short Term Option Daily Expirations for IWM to two expirations for Tuesday and Thursday expirations while expanding the Short Term Option Series Program to permit Tuesday, and Thursday expirations for IWM. Expanding the Short Term Option Series Program to permit the listing of Tuesday and Thursday expirations in IWM will account for the addition of 6.77% of

[10] *See* ISE Supplementary Material .03(c) and (d) to Options 4, Section 5.

[11] *See* ISE Supplementary Material .03 to Options 4, Section 5.

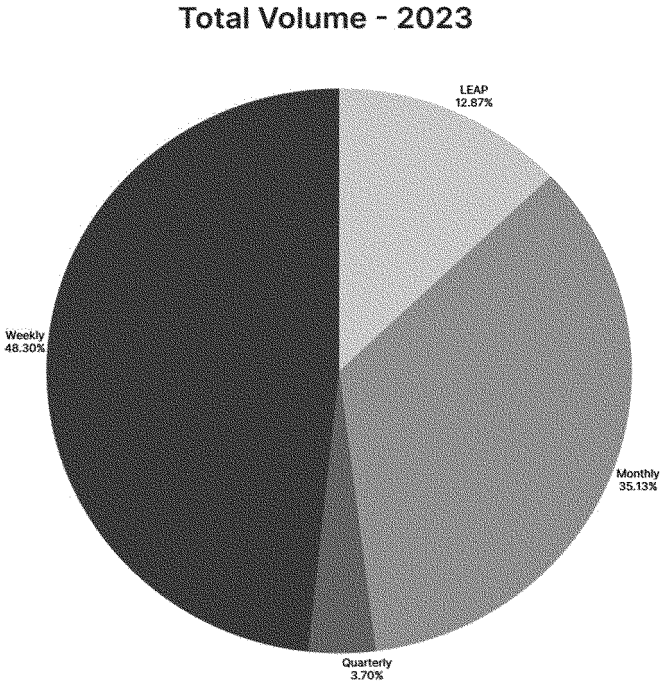
[12] *See* ISE Supplementary Material .03(b) to Options 4, Section 5.

[13] *See* ISE Supplementary Material .03 to Options 4, Section 5.

[14] The Exchange sourced this information from The Options Clearing Corporation (''OCC''). The information includes time averaged data (the number of strikes by maturity date divided from the number of trading days) for all 17 options markets through December 8, 2023.

strikes for IWM.[15] With respect to the impact to the Short Term Option Series Program on IWM overall, the impact would be a 20% increase in strikes.[16] With respect to the impact to the Short Term Options Series Program overall, the impact would be a 0.1% increase in strikes.[17]

Members will continue to be able to expand hedging tools because all days of the week would be available to permit Members to tailor their investment and hedging needs more effectively in IWM.



Weeklies comprise 48.30% of the total volume of options contracts.[18] The Exchange believes that inner weeklies (first two weeks) represent high volume as compared to outer weeklies (the last three weeks) and would be more attractive to market participants.

The introduction of IWM Tuesday and Thursday expirations will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that IWM Tuesday and Thursday expirations will allow market participants to purchase IWM options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that IWM Tuesday and Thursday Short Term Daily Expirations will allow market participants to purchase IWM options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. Further, the proposal to permit Tuesday and Thursday Short Term Daily Expirations for options on IWM listed pursuant to the Short Term Option Series Program, subject to the proposed limitation of two nearest expirations, would protect investors and the public interest by providing the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in IWM options, thus allowing them to better manage their risk exposure.

In particular, the Exchange believes the Short Term Option Series Program has been successful to date and that Tuesday and Thursday IWM Short Term Daily Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. Similarly, the Exchange believes Tuesday and Thursday IWM Short Term Daily Expirations should create greater trading and hedging opportunities and provide customers the flexibility to tailor their investment objectives more effectively. ISE currently lists SPY and QQQ Tuesday and Thursday Short Term Daily Expirations.[21]

With this proposal, Tuesday and Thursday IWM Expirations would be treated similar to existing Tuesday and Thursday SPY and QQQ Expirations and would expire in the same week that standard monthly options expire on

[15] The Exchange sourced this information, which are estimates, from LiveVol®. The information includes data for all 17 options markets as of January 3, 2024.

[16] The Exchange sourced this information, which are estimates, from LiveVol®. The information includes data for all 17 options markets as of January 3, 2024.

[17] The Exchange sourced this information, which are estimates, from LiveVol®. The information includes data for all 17 options markets as of January 3, 2024.

[18] The chart represents industry volume in terms of overall contracts. Weeklies comprise 48.30% of volume while only comprising 17.22% of the strikes. The Exchange sourced this information from OCC. The information includes data for all 17 options markets through December 8, 2023.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* ISE Supplementary Material .03 at Options 4, Section 5.

Fridays.[22] Further, today, Tuesday and Thursday Short Term Option Daily Expirations do not expire on a business day in which monthly options series or Quarterly Options Series expire.[23] Today, all Short Term Option Daily Expirations expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire. There are no material differences in the treatment of Tuesday and Thursday SPY and QQQ Short Term Daily Expirations as compared to the proposed Tuesday and Thursday IWM Short Term Daily Expirations.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed Tuesday and Thursday IWM Short Term Daily Expirations, in the same way that it monitors trading in the current Short Term Option Series and trading in Tuesday and Thursday SPY and QQQ Expirations. The Exchange also represents that it has the necessary systems capacity to support the new options series. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of Tuesday and Thursday IWM Short Term Daily Expirations.

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.

Similar to SPY and QQQ Tuesday and Thursday Expirations, the introduction of IWM Tuesday and Thursday Short Term Daily Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that IWM Tuesday and Thursday Short Term Daily Expirations will allow market participants to purchase IWM options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. The Exchange notes that Cboe began listing Tuesday and Thursday expirations in RUTW and MRUT on January 8, 2024.

The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents other options exchanges from proposing similar rules to list and trade Short-Term Option Series with Tuesday and Thursday Short Term Daily Expirations. The Exchange notes that having Tuesday and Thursday IWM expirations is not a novel proposal, as SPY and QQQ Tuesday and Thursday Expirations are currently listed on ISE.[24]

Further, the Exchange does not believe the proposal will impose any burden on intra-market competition, as all market participants will be treated in the same manner under this proposal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–ISE–2024–06 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–2024–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ISE–2024–06 and should be submitted on or before March 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–04298 Filed 2–29–24; 8:45 am]

BILLING CODE 8011–01–P

[22] *See* ISE Supplementary Material .03(b) at Options 4, Section 5.

[23] *See* ISE Supplementary Material .03 at Options 4, Section 5

[24] *See* ISE Supplementary Material .03 at Options 4, Section 5.

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99606; File No. SR–NYSEARCA–2024–16]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Rule 1.1

February 26, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 14, 2024, NYSE Arca, Inc. (''NYSE

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Arca'' 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1.1 (Definitions) to adopt a category of Market Makers called Floor Market Makers and to make other conforming changes. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Exchange Rule 1.1 (Definitions) to adopt a category of Market Makers called Floor Market Makers and to make other conforming changes. The Exchange notes that the proposed category of Floor Market Makers is substantively identical to the category of Floor Market Makers on at least one other options exchange, including on the Exchange's affiliated SRO, NYSE American LLC (''NYSE American'').[4]

The Exchange proposes to adopt a category of Market Maker called a Floor Market Maker, which would be substantively identical to the category of Floor Market Maker on NYSE American. In this regard, the Exchange proposes to add a definition of Floor Market Maker that would provide that a Floor Market Maker is ''a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange.'' Consistent with this proposal, the Exchange also proposes to amend Rules 6.32–O (Market Maker Defined) to make clear that Floor Market Makers are included in the definition of Market Maker, unless otherwise specified or unless context requires otherwise.[5] As such, Floor Market Makers are required to satisfy the myriad of obligations imposed on Market Makers including registration requirements per Rule 6.33–O (Registration of Market Makers), minimum trading requirements for option issues in appointment per Rule 6.35–O (Appointment of Market Makers), minimum continuous quoting requirements per Rules 6.37–O (Obligations of Market Maker) and 6.37AP–O (Market Maker Quotations), among others.[6] In particular, at least 75% of the trading activity of each Market Maker, including Floor Market Makers, must be in option issues in its appointed issues (the ''minimum 75% trading requirement'').[7] However, relevant to the proposed category of Floor Market Maker, trades executed on the Trading Floor are counted toward the minimum 75% trading requirement, regardless of whether the trades are in option issues in the Market Maker's appointment.[8]

The primary role of Market Makers is to provide liquidity. The Exchange does not limit the number of participants who may act as Market Makers and would likewise not limit the number of Market Makers acting as Floor Market Makers. The proposed category of Floor Market Makers would have a specific focus on providing liquidity for orders submitted for execution on the Floor of the Exchange through open outcry. The Exchange believes that the nature of open outcry transactions lends itself better to larger-sized transactions than the liquidity that is typically available electronically and the proposed installation of Floor Market Makers would encourage greater participation in, and increased liquidity for, such large trades. The Exchange therefore believes that all market participants stand to benefit from any increased opportunities for order execution resulting from the infusion of liquidity on the Trading Floor.

The Exchange has submitted a separate fee filing that will make Market Makers acting as Floor Market Makers eligible for beneficial fee treatment, provided the Floor Market Maker satisfies certain criteria, as is the case on NYSE American.[9]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposal to adopt a new category of Market Makers called Floor Market Maker and to subject Floor Market Makers to the same requirements as non-Floor Market

[4] *See* NYSE American Rules 900.2NY (Definitions) (defining a ''Floor Market Maker'' as ''a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange'').

[5] *Compare* proposed Rule 6.32–O (providing, in relevant part, that ''[a] Market Maker on the Exchange will be a Market Maker, *Floor Market Maker,* or a Lead Market Maker'' and that ''[u]nless specified, or unless the context requires otherwise, the term Market Maker refers to Market Makers, *Floor Market Makers,* and Lead Market Makers'') (emphasis added) *with* NYSE American Rule 920NY (providing, in relevant part, that ''[a] Market Maker on the Exchange will be either a Remote Market Maker, a Floor Market Maker, a Specialist or an e-Specialist'' and that ''[u]nless specified, or unless the context requires otherwise, the term Market Maker refers to Remote Market Makers, Floor Market Makers, Specialists and e-Specialists'').

[6] Floor Market Makers likewise must comply with the other requirements specific to Market Makers, including Rules 6.34–O (Trading by OTP Holders and OTP Firms on the Floor), 6.34A–O (Market Maker Authorized Traders—OX), 6.35–O (Appointment of Market Makers), 6.36–O (Letters of Guarantee), 6.37B–O (Market Maker Orders), and 6.39–O (Securities Accounts and Orders of Market Makers).

[7] *See* Rule 6.35–O(i) (Appointment of Market Makers), Trading Requirements).

[8] *See* Commentary .01 to Rule 6.35–O (providing that trades effected on the Trading Floor to accommodate cross trades executed pursuant to Rule 6.47–O (*i.e.,* taking the other side of a ''crossing'' order) will ''count toward the Market Maker's 75% requirement, regardless of whether the trades are in issues within or without the Market Maker's appointment'').

[9] *See* SR–NYSEArca–2024–12 (providing for discounted rates on monthly OTP fees to Floor Market Makers that satisfy certain criteria). The Exchange notes that the description of Floor Market Makers set forth SR–NYSEArca–2024–12 is identical to the description proposed herein and the proposed minimum 75% Manual trading requirement aligns with Commentary .01 to Rule 6.35–O, as described herein. See NYSE American Fee Schedule, Section III.A. (Monthly ATP Fees) and Section III.A., n. 1 (describing discounted rates available to Floor Market Makers that meet specific criteria, which rates/criteria are identical to those proposed herein).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

Makers will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, by creating a subset of Market Makers that will have a presence on the Trading Floor with a focus on providing liquidity for the execution of open outcry orders The Exchange notes that Floor Market Makers would have an incentive to execute orders in all options issues in open outcry because all such trades would count towards the 75% minimum trading requirement (per Commentary .01 to Rule 6.35–O). As noted herein, the Exchange would not limit the number of Market Makers acting as Floor Market Makers. The Exchange believes that the nature of open outcry transactions lends itself better to larger-sized transactions than the liquidity that is generally available electronically and the proposed installation of Floor Market Makers would encourage greater participation in such large trades. Therefore, the proposal will benefit all market participants trading on the Exchange, especially those seeking liquidity for large-sized and complex orders. Moreover, the Exchange believes that the proposal would benefit investors, the national market system, and the Exchange by increasing competition for order flow and executions, which would improve price discovery.

The Exchange notes that, as proposed, Floor Market Makers would be subject to the same requirements and obligations as non-Floor Market Makers. That said, Floor Market Makers, by virtue of their presence on the Trading Floor, would be better positioned to execute trading interest in open outcry, which would increase liquidity on the Trading Floor to the benefit of all market participants. Because the proposed category of Floor Market Makers are subject to the same obligations as non-Floor Market Makers, the Exchange notes that it would not need to undertake any additional procedures or create additional surveillances to regulate its Floor Market Makers together with non-Floor Market Makers.

As noted herein, the proposal to have Floor Market Makers is not new or novel as Floor Market Makers exist pursuant to the rules of Exchange's affiliated options SRO, NYSE American.[12] As such, this proposal does not raise any issues not previously considered by the Exchange.

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. Instead, the Exchange believes that the proposed change would continue to encourage competition because it would apply to all similarly-situated Market Makers. The Exchange believes the proposed change would not unduly burden market participants trading on the Exchange but would instead allow (and encourage) market making firms that do not already have a presence on the Trading Floor to install a Floor Market Maker. The Exchange believes that all market participants stand to benefit from this proposal because Floor Market Makers focused on open outcry transactions would encourage increased liquidity and quote competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its rules to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative would be consistent with the protection of investors and the public interest because it would enable the Exchange to allow a subset of Market Makers to have a presence on the Trading Floor with a specific focus on providing liquidity for the execution of open outcry orders without delay. The Exchange further states that it believes the presence of Floor Market Makers may result in increased liquidity for open outcry interest, which would benefit investors and the public interest and should therefore be implemented without delay. Finally, the Exchange notes that its affiliate Exchange (NYSE American) has a substantially identical rule and therefore the proposed rule change does not raise any new novel regulatory issues. For the foregoing reasons, the Commission does not believe that the proposal raises any new or novel regulatory issues, and may provide market participants with an additional opportunities to interact with liquidity on the Trading Floor. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[18]

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

[12] *See* NYSE American Rule 900.2NY (Definitions) (defining a ''Floor Market Maker'' as ''a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange''). *See also* BOX Options LLC (''BOX'') Rule 8510 (defining a ''Floor Market Maker'' as ''an Options Participant of the Exchange located on the Trading Floor who has received permission from the Exchange to trade in options for his own account'').

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] *Id.* 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.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEARCA–2024–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2024–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–16 and should be submitted on or before March 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–04299 Filed 2–29–24; 8:45 am]

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[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99598; File No. SR–BX–2024–006]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt an OTTO Protocol

February 26, 2024

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2024, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new protocol, ''Ouch to Trade Options'' or ''OTTO'' and establish pricing for this new protocol.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX proposes to offer a new order entry protocol called OTTO. Today, BX Participants may enter orders into the Exchange through the ''Financial Information eXchange'' or ''FIX.'' [3] The proposed new OTTO protocol is identical to the OTTO protocol offered today on 3 Nasdaq affiliated exchanges, Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX'').

The OTTO protocol is a proprietary protocol of Nasdaq, Inc. The Exchange continues to innovate and modernize technology so that it may continue to compete among options markets. The ability to continue to innovate with technology and offer new products to market participants allows BX to remain competitive in the options space which currently has seventeen options markets and potential new entrants.

OTTO Protocol

As proposed, OTTO would allow Participants and their Sponsored Customers [4] to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. OTTO features would include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) System [5] event messages (*e.g.,* start of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FIX is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders and responses to and from the Exchange. Features include the following: (1) execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. In addition, a BX Participant may elect to utilize FIX to send a message and PRISM Order, as defined within Options 3, Section 13, to all BX Participants that opt in to receive Requests for PRISM requesting that it submit the sender's PRISM Order with responder's Initiating Order, as defined within Options 3, Section 13, into the Price Improvement Auction (''PRISM'') mechanism, pursuant to Options 3, Section 13 (''Request for PRISM''). *See* Options 3, Section 7(e)(1)(A).

[4] General 2, Section 22 describes Sponsored Access arrangements.

[5] The term ''System'' or ''Trading System'' means the automated system for order execution and trade reporting owned and operated by BX as the BX Options market. The BX Options market comprises: (A) an order execution service that enables

trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. The Exchange notes that unlike FIX, which offers routing capability, OTTO does not permit routing. The Exchange proposes to include this description of OTTO in new Options 3, Section 7(e)(1)(B) and re-letter current ''B'' as ''C''.

Only one order protocol is required for a BX Participant to submit orders into BX. Only BX Participants may utilize ports on BX. Any market participant that sends orders to a BX Participant would not need to utilize a port. The BX Participant may send all orders, proprietary and agency, through one port to BX. Participants may elect to obtain multiple ports to organize their business,[6] however only one port is necessary for a Participant to enter orders on BX.

Participants may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary. Participants may prefer one protocol as compared to another protocol, for example, the ability to route may cause a Participant to utilize FIX and a Participant that desires to execute an order locally may prefer OTTO. Also, the OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Participants depending on their trading behavior. Nasdaq believes that the addition of OTTO will provide BX Participants with additional choice when submitting orders to BX.

While the Exchange has no way of predicting with certainty the amount or type of OTTO Ports market participants will in fact purchase, the Exchange anticipates that some Participants will subscribe to multiple OTTO Ports in combination with FIX Ports. The Exchange notes that Options Participants may use varying number of OTTO ports based on their business needs.

Other Amendments

In connection with offering OTTO, the Exchange proposes to amend other rules within Options 3. Each amendment is described below.

Options 3, Section 7

BX proposes to amend Options 3, Section 7, Types of Orders and Quote Protocols. Specifically, BX proposes to amend Options 3, Section 7 (b)(2) that describes the Immediate-or-Cancel'' or ''IOC'' order. Today, Options 3, Section 7(b)(2)(B) notes that an IOC order may be entered through FIX or SQF, provided that an IOC Order entered by a Market Maker through SQF is not subject to the Order Price Protection, the Market Order Spread Protection, or Size Limitation in Options 3, Section 15(a)(1), (a)(2), and (b)(2), respectively. The Exchange proposes to add ''OTTO'' to the list of protocols to note that an IOC order may also be entered through OTTO.

BX also proposes to amend the ''DAY'' order in Options 3, Section 7(b)(3) that currently provides that a Day order may be entered through FIX. With the addition of OTTO, a Day order may also be entered through OTTO.

BX also proposes to amend the ''Good Til Cancelled'' or ''GTC'' order which currently does not specify that a GTC order may be entered through FIX. GTC orders would only be able to be entered through FIX and not OTTO. The Exchange proposes to amend Options 3, Section 7(b)(4) to add a sentence to note that GTC orders may be entered through FIX.

Options 3, Section 8

BX proposes to amend Options 3, Section 8, Options Opening Process. BX proposes to amend Options 3, Section 8(l) that describes the Opening Process Cancel Timer. The Opening Process Cancel Timer represents a period of time since the underlying market has opened. If an option series has not opened before the conclusion of the Opening Process Cancel Timer, a Participant may elect to have orders returned by providing written notification to the Exchange. Today, these orders include all non-Good Til Cancelled Orders received over the FIX protocol. The Exchange proposes to add the OTTO protocol as well to the rule text language in that paragraph.

Options 3, Section 12

The Exchange proposes to amend the Options 3, Section 12, Crossing Orders. Specifically, the Exchange proposes to amend Customer Crossing Orders in Options 3, Section 12(a) that currently provides Public Customer-to-Public Customer Cross Orders are automatically executed upon entry provided that the execution is at or between the best bid and offer on the Exchange and (i) is not at the same price as a Public Customer Order on the Exchange's limit order book and (ii) will not trade through the NBBO. Public Customer-to-Public Customer Cross Orders must be entered through FIX. The Exchange proposes to remove the sentence that provides that Public Customer-to-Public Customer Cross Orders must be entered through FIX because they will be able to be entered through both FIX and OTTO.

Options 3, Section 17

The Exchange proposes to amend the Kill Switch at Options 3, Section 17. The Kill Switch provides Participants with an optional risk management tool to promptly cancel and restrict orders. With the introduction of OTTO, the Exchange proposes to align its Kill Switch rule text with MRX's Kill Switch.[7] The Exchange proposes to note in Options 3, Section 17(a) that BX Participants may initiate a message(s) to the System to promptly cancel and restrict their order activity on the Exchange, as is the case today, as described in section (a)(1). This amendment simply rewords the rule text without a substantive amendment to the rule text.

The Exchange proposes to renumber Options 3, Section 17(a)(i) and (ii) as (a)(1) and (2). Current Options 3, Section 17(a)(i) states, ''If orders are cancelled by the BX Participant utilizing the Kill Switch, it will result in the cancellation of all orders requested for the Identifier(s). The BX Participant will be unable to enter additional orders for the affected Identifier(s) until re-entry has been enabled pursuant to section (a)(ii).'' The Exchange proposes to instead provide, ''A BX Participant may submit a request to the System through FIX or OTTO to cancel all existing orders and restrict entry of additional orders for the requested Identifier(s) on a user level on the Exchange.'' With the addition of OTTO, the Exchange notes

Participants to automatically execute transactions in option series; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment; (B) a trade reporting service that submits ''locked-in'' trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the Options Price Reporting Authority for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a ''locked-in'' trading environment; and (C) the data feeds described in Options 3, Section 23. *See* BX Options 1, Section 1(a)(59).

[6] For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons, segregating order flow among different trading desks, or other determinations that are specific to that Participant. A market participant may utilize multiple ports in some cases to send multiple orders through different ports to avoid any latency or queuing of orders. The Exchange notes that to the extent that different OTTO Ports are used to send multiple orders as compared to sending multiple orders through one OTTO Port the difference from a latency standpoint would be in nanoseconds.

[7] *See* MRX Options 3, Section 17.

that both FIX and OTTO orders may be cancelled. Further, today, BX Participants utilize an interface to send a message to the Exchange to initiate a Kill Switch.[8] The Exchange notes that in lieu of the interface, BX Participants will only be able to initiate a cancellation of their orders by sending a mass purge request through FIX or OTTO. This change will align the Kill Switch functionality to that of ISE, GEMX and MRX Options 3, Section 17 and will enable BX Participants to initiate the Kill Switch more seamlessly without the need to utilize a separate interface. When initiating a cancellation of their orders by sending a mass purge request through FIX or OTTO, Participants will be able to submit a Kill Switch request on a user level only. This is a change from the ability to cancel orders on either a user or group level[9] with the interface. The Exchange proposes to amend Options 3, Section 17(a) to note this change by removing the words ''or group'' and the following sentence that applies to a group.[10]

Finally, the Exchange proposes to amend proposed Options 3, Section 17(a)(2) to align to MRX's rule text by providing ''Once a BX Participant initiates a Kill Switch pursuant to (a)(1) above . . .'' in the first sentence. This amendment simply rewords the rule text without a substantive amendment to the rule text.

Options 3, Section 18

The Exchange proposes to amend Options 3, Section 18, Detection of Loss of Communication. The Exchange proposes to add OTTO to Options 3, Section 18 as OTTO would also be subject to this rule. Today, when the SQF Port or the FIX Port detects the loss of communication with a Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period, the Exchange will automatically logoff the Participant's affected Client Application and automatically cancel all of the Participant's open quotes through SQF and open orders through FIX. Quotes and orders are cancelled across all Client Applications that are associated with the same BX Options Market Maker ID and underlying issues.

At this time, the Exchange proposes to permit orders entered through OTTO to be cancelled similar to FIX orders when the Exchange's server does not receive a Heartbeat message for a certain time period. The Exchange is proposing to amend Options 3, Section 18 to also rearrange the rule text to add the word ''Definitions'' next to ''a'' and move the rule text in current ''a'' to ''b'' and re-letter the other paragraphs accordingly. Also, the Exchange proposes to define ''Session of Connectivity'' for purposes of this rule to mean each time the Participant connects to the Exchange's System. Further, each new connection, intra-day or otherwise, is a new Session of Connectivity. The Exchange proposes to use the new definition throughout Options 3, Section 18.

Similar to FIX, when the OTTO Port detects the loss of communication with a Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period, the Exchange will automatically logoff the Participant's affected Client Application and automatically cancel all of the Participant's open orders through OTTO. Orders would be cancelled across all Client Applications that are associated with the same BX Options Market Maker ID and underlying issues. The Exchange proposes to update Options 3, Section 18 to provide in proposed Options 3, Section 18(a)(3) that the OTTO Port is the Exchange's proprietary System component through which Participants communicate their orders from the Client Application. Further, the Exchange would note in proposed Options 3, Section 18(c) that when the OTTO Port detects the loss of communication with a Participant's Client Application because the Exchange's server does not receive a Heartbeat message for a certain time period (''nn'' seconds), the Exchange will automatically logoff the Participant's affected Client Application and if the Participant has elected to have its orders cancelled pursuant to proposed Section 18(f), automatically cancel all orders. Proposed Options 3, Section 18(f) would provide that the default period of ''nn'' seconds for OTTO Ports would be fifteen (15) seconds for the disconnect and, if elected, the removal of orders. A Participant may determine another time period of ''nn'' seconds of no technical connectivity, as required in proposed paragraph (c), to trigger the disconnect and, if so elected, the removal of orders and communicate that time to the Exchange. The period of ''nn'' seconds may be modified to a number between one hundred (100) milliseconds and 99,999 milliseconds for OTTO Ports prior to each Session of Connectivity to the Exchange. This feature may be disabled for the removal of orders, however the Participant will be disconnected.

Proposed Options 3, Section 18(f)(1) would provide that if the Participant changes the default number of ''nn'' seconds, that new setting shall be in effect throughout the current Session of Connectivity and will then default back to fifteen seconds. The Participant may change the default setting prior to each Session of Connectivity. Finally, as proposed in Options 3, Section 18(f)(2), if the time period is communicated to the Exchange by calling Exchange operations, the number of ''nn'' seconds selected by the Participant will persist for each subsequent Session of Connectivity until the Participant either contacts Exchange operations by phone and changes the setting or the Participant selects another time period through the Client Application prior to the next Session of Connectivity. The trigger for OTTO Ports is event and Client Application specific. The automatic cancellation of the BX Options Market Maker's open orders for OTTO Ports entered into the respective OTTO Ports via a particular Client Application will neither impact nor determine the treatment of orders of the same or other Participants entered into the OTTO Ports via a separate and distinct Client Application. The proposed amendments for OTTO mirror the manner in which FIX Ports are treated when the Exchange's server does not receive a Heartbeat message for a certain time period for a FIX Port.[11]

Pricing

BX proposes to amend its Pricing Schedule at Options 7, Section 3, BX Options Market—Ports and other Services, to add pricing for the new OTTO protocol. Specifically, BX proposes to offer Participants the first OTTO Port at no cost. The one OTTO Port would permit BX Participants to submit orders into BX. Today, only one account number[12] is necessary to transact an options business on BX and account numbers are available to Participants at no cost. The Exchange proposes to note in the Pricing Schedule at Options 7, Section 3 that BX does not

[8] *See* Securities Exchange Act Release No. 76116 (October 8, 2015), 80 FR 62147 (October 15, 2015) (SR–BX–2015–050) (Order Approving Proposed Rule Change To Adopt a Kill Switch).

[9] A permissible group could include all badges associated with a Market Maker. Today, a Participant is able to set up these groups in the interface to include all or some of the Identifiers associated with the Participant firm so that a GUI Kill Switch request could apply to this pre-defined group.

[10] The Exchange proposes to remove this sentence, ''Permissible groups must reside within a single broker-dealer'' as the group option would no longer exist.

[11] The Exchange proposes to update internal cross-references to accommodate relocated text.

[12] An ''account number'' means a number assigned to a Participant. Participants may have more than one account number. *See* Options 1, Section 1(a)(2).

assess a fee for an account number to provide greater transparency to Participants.

The Exchange proposes to assess an OTTO Port Fee of $650 per port, per month, per account number for each subsequent port beyond the first port. This is the same fee assessed for OTTO Ports on MRX and GEMX.[13] Additional OTTO Ports beyond the first OTTO Port would be optional for Participants to utilize as the Exchange is offering the first OTTO order protocol, per Participant, at no cost and only one port is necessary to enter orders into BX.[14]

Implementation

The Exchange will implement this rule change on or before December 20, 2025. The Exchange will announce the operative date to Participants in an Options Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] 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. Additionally, the Exchange believes that its proposal furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[17] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

OTTO Protocol

The Exchange's proposal to adopt OTTO is consistent with the Act because OTTO would provide BX Participants with an alternative protocol to submit orders to the Exchange. As proposed, BX would offer the first OTTO Port at no cost to submit orders into BX, which would remove impediments to and perfect the mechanism of a free and open market. While BX Participants may elect to obtain multiple ports to organize their business,[18] only one order port is necessary for a Participant to enter orders on BX. A BX Participant may send all orders, proprietary and agency, through one port to BX without incurring any cost with this proposal. In the alternative, BX Participants may elect to obtain multiple ports to organize their business.[19]

With the addition of OTTO, a BX Participant may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary. Each BX Participant would receive one OTTO Port at no cost, thereby promoting just and equitable principles of trade. The Exchange notes that Participants may prefer one order protocol as compared to another order protocol, for example, the ability to route an order may cause a Participant to utilize FIX and a Participant that desires to execute an order locally may utilize OTTO. Also, the OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Participants depending on their trading behavior. With this proposal, BX Participant may organize their business as they chose with the ability to send orders to BX at no cost. The proposed new OTTO protocol is identical to the OTTO protocol offered today on ISE, GEMX, MRX.

Other Amendments

In connection with offering OTTO, the Exchange proposes to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized. IOC Orders may be entered through FIX, OTTO or SQF. A Day order may be entered through FIX or OTTO. A GTC order may only be entered through FIX. A Public Customer-to-Public Customer Cross Order may be entered through FIX or OTTO. Other processes such the Opening Cancel Timer would impact FIX and OTTO equally.

The Exchange's proposal to amend the Kill Switch at Options 3, Section 17 to align its rule text in proposed Options 3, Section 17(a) and (a)(2) with MRX's Options 3, Section 17 is consistent with the Act because it does not substantively amend the functionality beyond removing the group level cancel capability. The Exchange's proposal to amend proposed Options 3, Section 17(a)(2) to specify that FIX and OTTO orders may be cancelled is consistent with the Act as it will make clear that all orders entered on BX may be purged through the Kill Switch. Finally, allowing BX Participants to send a mass purge request through FIX or OTTO, in lieu of an interface, is consistent with Act and the protection of investors and the general public because it will enable BX Participants to initiate the Kill Switch more seamlessly without the need to utilize a separate interface. Further, utilizing the order protocols directly, in lieu of the interface, will align the Kill Switch functionality to that of ISE, GEMX and MRX. When initiating a cancellation of their orders by sending a mass purge request through FIX or OTTO, Participants will be able to submit a Kill Switch request on a user level only because the purge will be specific to a FIX or OTTO user for these ports.

Finally, the Detection of Loss of Communication would apply equally to FIX and OTTO. The Exchange believes that its proposal is consistent with the Act and protects investors as the Exchange is making clear what types of order types and other mechanisms may utilize OTTO. Today, BX Participants utilize FIX to enter their orders. Despite the fact that OTTO would not be available for the GTC Time-In-Force modifier, the Exchange notes that one OTTO Port is being provided to Participants at no cost. Today, FIX is the only manner in which to enter orders into BX.

Pricing

BX's proposal to amend its Pricing Schedule at Options 7, Section 3 will offer BX Participants the first OTTO Port at no cost to submit orders into BX. Only BX Participants may utilize ports on BX. A Participant can send all orders, proprietary and agency, through one port to BX. Only one order entry protocol is required for BX Participants to submit orders into BX to meet its regulatory requirements.[20] Additional ports beyond one port are not required for a BX Participant to meet its regulatory obligations. Participants may elect to obtain multiple account numbers to organize their business, however only one account number is necessary to transact options business on BX and account numbers are available to Participants at no cost.

The Exchange's proposal is reasonable, equitable and not unfairly

[13] *See* MRX Options 7, Section 6 and GEMX Options 7, Section 6, C. MRX and GEMX do not offer an OTTO Port at no cost. MRX offers the first FIX Port at no cost.

[14] The Exchange proposes to renumber the SQF Port Fee and SQF Purge Port Fee in Options 7, Section 3(i).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* 15 U.S.C. 78f(b)(4) and (5).

[18] For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant.

[19] For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant.

[20] BX Participants have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations. *See* Rule 611 of Regulation NMS; 17 CFR 242.611 and FINRA Rule 5310.

discriminatory as BX is providing Participants the first OTTO Port to submit orders at no cost. One OTTO Port would allow a BX Participant to meet its regulatory requirements. Additional OTTO Ports, beyond the first port which is being offered at no cost, are not required for a BX Participant to meet its regulatory obligations. For the foregoing reasons, the Exchange believes that it is reasonable to assess no fee for the first OTTO Port obtained by a BX Participant as a BX Participant is able to meet its regulatory requirements with one OTTO Port. Additionally, the OTTO protocol is a proprietary protocol of Nasdaq, Inc. The Exchange continues to innovate and modernize technology so that it may continue to compete among options markets. The ability to continue to innovate with technology and offer new products to market participants allows BX to remain competitive in the options space which currently has seventeen options markets and potential new entrants.

Today, a Member on ISE, GEMX, or MRX may utilize either a FIX or an OTTO Port to submit orders to the respective exchange. In analyzing the data provided below for ISE, GEMX and MRX, it is important to note that 30% of members on ISE subscribe to 1 OTTO Port and 24% of members subscribe to 1 FIX Port. ISE had a market share of 5.90% in 2023. Below are charts which display the number of members that subscribe to OTTO and FIX Ports on MRX.

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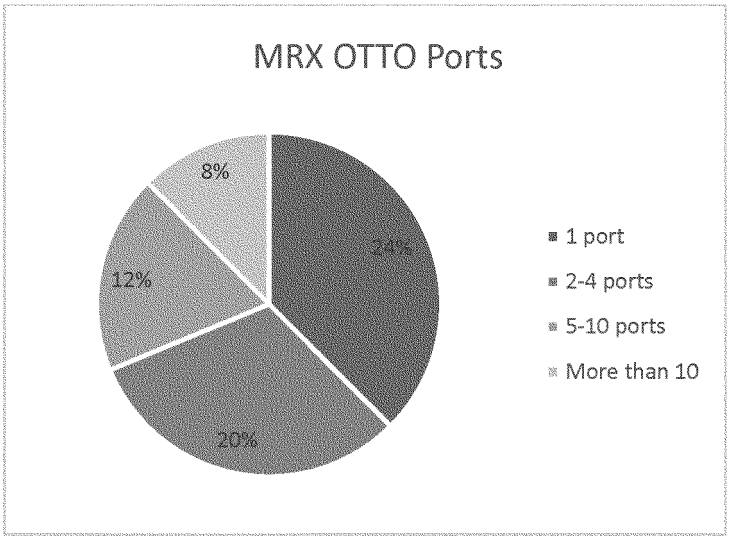
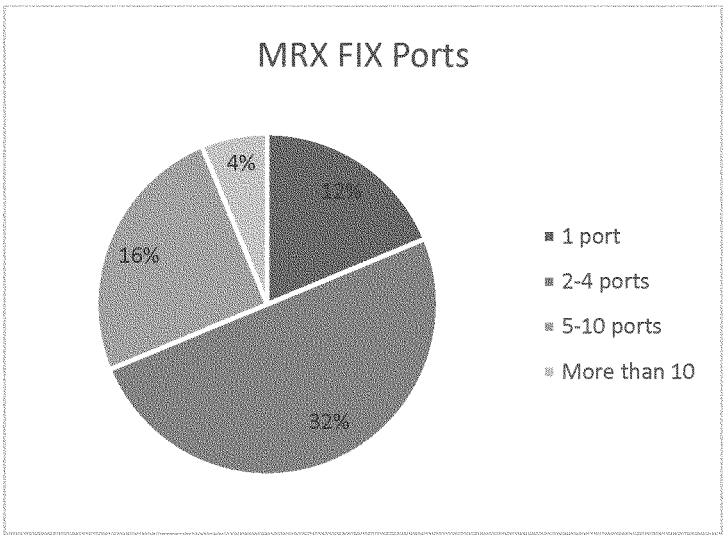
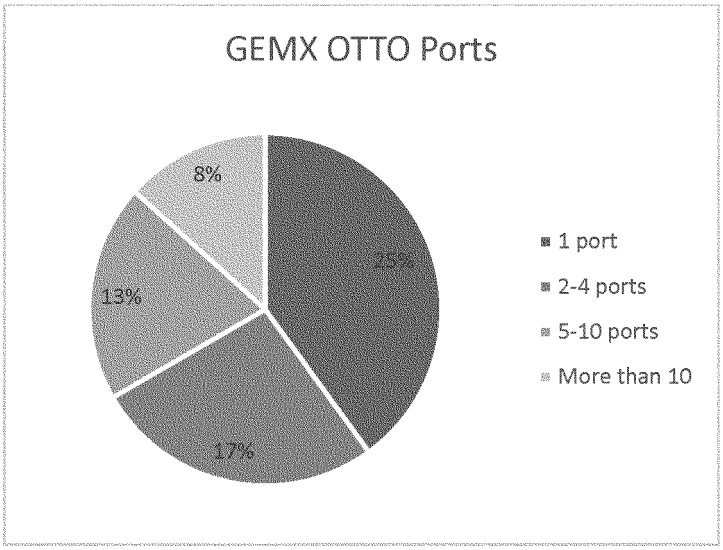
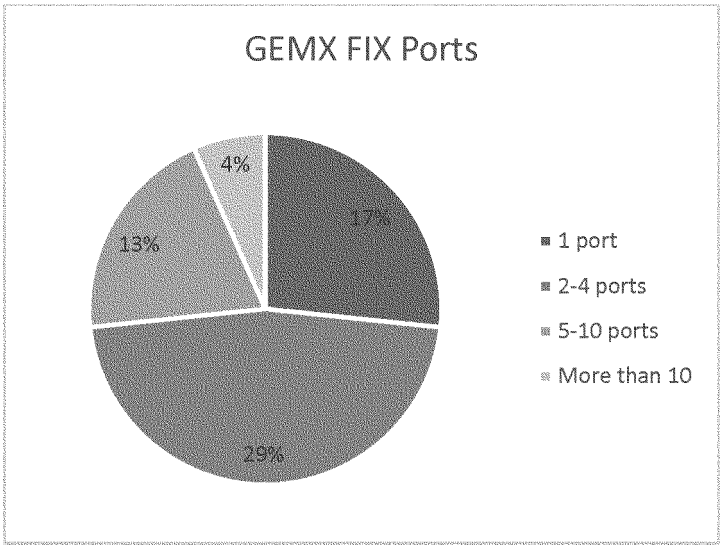


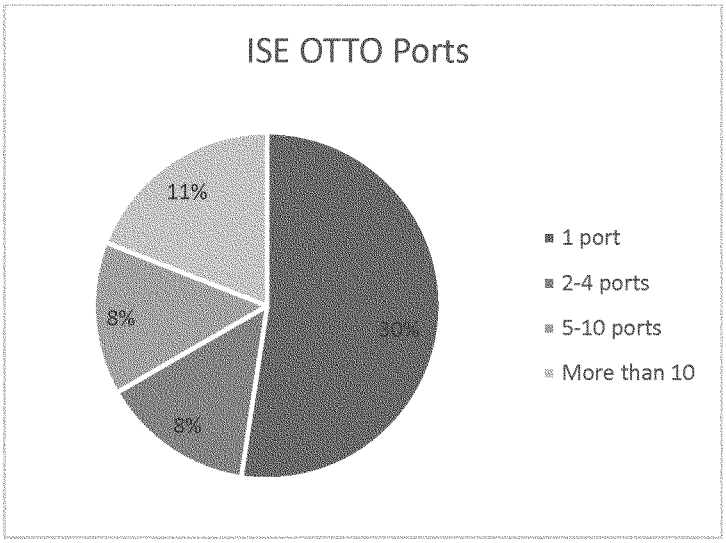


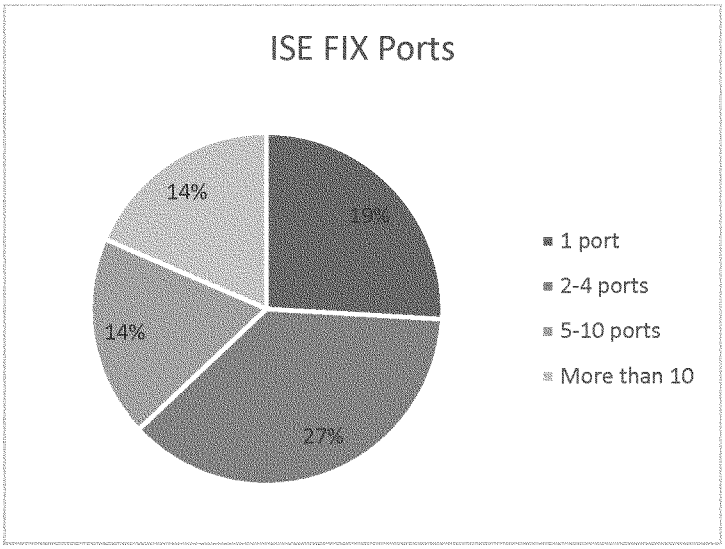
Below are charts which display the number of members that subscribe to OTTO and FIX Ports on GEMX.





Below are charts which display the number of members that subscribe to OTTO and FIX Ports on ISE.





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Further it is equitable and not unfairly discriminatory to assess no fee for the first OTTO Port to a BX Participant as all BX Participants would be entitled to the first OTTO Port at no cost. With this proposal, BX Participants may organize their business in such a way as to submit orders to BX at no cost.

The Exchange's proposal to assess BX Participants $650 per port, per month, per account number for OTTO Ports beyond the first port is reasonable because these ports are not required for a member to meet its regulatory requirements. BX Participants only require one order entry port to submit orders to BX. The Exchange is offering Participants one free OTTO Port. Participants that subscribe to FIX could utilize their FIX Port to submit orders and would not need to utilize an OTTO Port. Participants electing to subscribe to more than one OTTO Port are choosing the additional ports to accommodate their business model. For example, a Participant may purchase one or more OTTO Ports for its market making business, and then purchase separate OTTO Ports for proprietary trading or customer facing businesses, allowing the firm to send multiple messages into the Exchange's System in parallel rather than sequentially. Some Participants that provide direct market access to their customers may also choose to purchase separate ports for different clients. While a smaller Participant may choose to subscribe to two OTTO Ports, a larger market participant with a substantial and diversified U.S. options business may opt to purchase multiple OTTO Ports to support both the volume and types of activity that they conduct on the Exchange. While the Exchange has no way of predicting with certainty the amount of OTTO Ports market participants will in fact purchase, the Exchange anticipates that some Participants will subscribe to multiple OTTO Ports. The Exchange believes that the proposed OTTO Port fees beyond the first port are reasonable because these ports are not required for a member to meet its regulatory requirements. Additionally, the proposed OTTO Port fee of $650 per port, per month, per account number is the same fee charged for OTTO Ports on MRX and GEMX.[21]

The Exchange's proposal to assess BX Participants $650 per port, per month, per account number for OTTO Ports beyond the first port is equitable and not unfairly discriminatory because any BX Participant may elect to subscribe to

[21] *See* MRX Options 7, Section 6 and GEMX Options 7, Section 6, C. MRX and GEMX do not offer an OTTO Port at no cost. MRX offers the first FIX Port at no cost.

additional OTTO Ports, however BX Participants only require one order entry port to submit orders to BX. The Exchange is offering Participants one free OTTO Port. Participants that subscribe to FIX could utilize their FIX Port to submit orders and would not need to utilize an OTTO Port. As noted herein, all BX Participants would be subject to the same fees for OTTO Ports. Also, as noted herein, account numbers are available on BX at no cost.

Unlike ISE, GEMX and MRX, BX only offers its Participants a FIX Port to submit orders to BX. As noted herein, the proposed OTTO Port Fee for additional ports is comparable to GEMX and MRX, which markets assess an OTTO Port Fee of $650 per port, per month, per account number.[22] GEMX and MRX do not offer the first OTTO Port at no cost, however MRX offers the first FIX Port at no cost.[23] Cboe offers more than one order entry port. Cboe port fees [24] are within the range of the proposed fees. Cboe does not offer a free order entry port and tiers its BOE and FIX Logical ports so that each subsequent port fee is higher than BX's port fees. Additionally, Cboe limits usage on each port and assesses fees for incremental usage [25] thereby increasing the expense for ports if the usage is exceeded and potentially requiring market participants to acquire additional ports to avoid additional costs. BOX port fees [26] are within the range of the proposed fees. While BOX does not offer an order entry port at no cost, it tiers its FIX and SAIL port fees and each subsequent port fee is lower. MIAX port fees [27] are within the range of the proposed fees. MIAX Port users are allocated two (2) Full Service MEI Ports and two (2) Limited Service MEI Ports per matching engine to which they connect.[28] NYSE Arca port fees [29] are within the range of the proposed fees. For each order/quote entry port utilized, NYSE Arca Market Makers may utilize, free of charge, one port dedicated to quote cancellation or ''quote takedown,'' which port(s) will not be included in the count of order/quote entry ports utilized.[30]

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 OTTO protocol is a proprietary protocol of Nasdaq, Inc. The Exchange continues to innovate and modernize technology so that it may continue to compete among options markets. The ability to continue to innovate with technology and offer new products to market participants allows BX to remain competitive in the options space which currently has seventeen options markets and potential new entrants. If BX were unable to offer and price new protocols, it would result in an undue burden on competition as BX would not have the ability to innovate and modernize its technology to compete effectively in the options space. BX's ability to offer OTTO will enable it to compete with other options markets that provide its market participants a choice as to the type of order entry protocols that may be utilized. BX's ability to offer and price new and innovative products and continue to modernize its technology, similar to other options markets, supports intermarket competition.

OTTO Protocol

The Exchange's proposal to adopt an OTTO Protocol does not impose an undue burden on intramarket competition. Today, all BX Participants utilize FIX to send orders to BX. The Exchange would offer each BX Participant the first OTTO Port at no cost with this proposal. With the addition of OTTO Ports, a BX Participant may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary. The Exchange's proposal to adopt an OTTO Protocol does not impose an undue burden on intermarket competition as other options exchanges offer multiple protocols today such as ISE, GEMX and MRX.

Other Amendments

The Exchange's proposal to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized does not impose an undue burden on intramarket competition as these rules will apply in the same manner to all Participants. The Exchange's proposal to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized does not impose an undue burden on intermarket competition as other options exchanges may elect to utilize their order entry protocols in different ways.

Pricing

Nothing in the proposal burdens intermarket competition because BX's proposal to offer the first OTTO Port for free permits BX to set fees, similar to other options markets, while continuing to allow BX Participants to meet their regulatory obligations. BX's proposal would permit BX Participants the ability to submit orders to BX at no cost through OTTO. Additional OTTO Ports are not required for BX Participants to meet their regulatory obligations. The proposed port fees are similar to port fees assessed by other options markets as noted in this proposal. Further, the Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. The Exchange notes that while the manner in which an order is sent to the Exchange may have an impact on latency, the difference

[22] *See* GEMX Options 7, Section 6.C and MRX Options 7, Section 6.

[23] *See* GEMX Options 7, Section 6.C and MRX Options 7, Section 6.

[24] Cboe assesses a fee of $750 per port up to 5 BOE/FIX Logical Ports, and $800 per port for over 5 BOE/FIX Logical Ports. *See* Cboe's Fees Schedule.

[25] Each Cboe BOE or FIX Logical Port incur the logical port fee indicated when used to enter up to 70,000 orders per trading day per logical port as measured on average in a single month. For each incremental usage of up to 70,000 per day per logical port will incur an additional logical port fee of $800 per month. *See* Cboe's Fees Schedule.

[26] BOX assesses tiered FIX Port Fees as follows: $500 per port per month for the first FIX Port, $250 per port per month for FIX Ports 2–5 and $150 per port per month for over 5 FIX Ports. BOX assesses $1,000 per month for all SAIL Ports for Market Making and $500 per month per port up to 5 ports for order entry and $150 per month for each additional port. *See* BOX's Fee Schedule.

[27] MIAX tiers its FIX Port fees as follows: $550 per month for the 1st FIX Port, $350 per month per port for the FIX Ports 2 through 5 and $150 per month for over 5 FIX Ports. MIAX tiers its MEI Port Fees and assesses fees per number of classes and as a percentage of National Average Daily Volume. MEI Port fees range from $5,000 to $20,500 per month. The applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurement. However, 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 The Options Clearing Corporation 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. MIAX will assess monthly MEI Port Fees on 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. *See* MIAX's Fee Schedule.

[28] MEI Port Fees include MEI Ports at the Primary, Secondary and Disaster Recovery data centers. MIAX Market Makers may request additional Limited Service MEI Ports for which MIAX will assess MIAX Market Makers $100 per month per additional Limited Service MEI Port for each engine. *See* MIAX's Fee Schedule.

[29] NYSE Arca assesses a tiered order/quote entry port fee of $450 for the first 40 ports and $150 per port per month for the 41 ports or greater. For purpose of calculating the number of order/quote entry ports and quote takedown ports, NYSE Arca aggregates the ports of affiliates. *See* NYSE Arca Options Fees and Charges.

[30] Any quote takedown port utilized by a NYSE Arca Market Maker that is in excess of the number of order/quote entry ports utilized will be counted and charged as an order/quote entry port. *See* NYSE Arca Options Fees and Charges.

from a latency standpoint would be in nanoseconds, and it would depend on the manner in which the order is being sent to the Exchange. A market participant sending 30 sequential orders through an OTTO Port may experience a slight latency of certain nanoseconds (less than a few nanoseconds) to permit serialized processing in the port and the match engine per order in certain cases. This is compared to a BX participant who submits 30 orders through multiple OTTO Ports at the same time. This distinction exists today on other options exchanges that offer market participants the ability to submit order flow in bulk,[31] which results in a larger number of orders being sent to the exchange's match engine in a quicker timeframe as compared to market participants that utilize a port that does not support bulk orders. Also, as noted herein, OTTO Orders do not route and therefore have a lower latency as compared to orders sent via a FIX Port. The Exchange notes that other factors may also contribute to the time it takes for an order to be executed. For example, on an exchange that offers complex orders, such orders with a stock component, may take additional time to execute as compared to a market order. In short, while latency may play a very small factor in the quantity of ports that are being utilized to send an order to the Exchange, all market participants may elect how their order is sent to an exchange. The Exchange notes that there is no correlation between the number of orders executed on the Exchange by a Participant and the number of ports subscribed to by a Participant. There are Participants that subscribe to a larger number of ports that have lower executed volumes on BX than those with half of the number of ports. Also, not all ports subscribed to by a Participant are active. Further, all Participants are entitled to obtain additional OTTO Ports or a mix of OTTO and FIX Ports. The Exchange is providing each Participant the first OTTO Port at no cost. To the extent Participants elect to utilize different technologies and connections to the Exchange, including different numbers and combinations of ports, the Exchange believes that the combinations may result in varying latencies as is the case on all other options exchanges today.

Nothing in the proposal burdens intra-market competition because the Exchange would uniformly assess the OTTO Port fees to all BX Participants, as applicable. Further, other exchanges have increased or added port fees in recent years. As recently as 2020, Cboe amended its port fees.[32] Specifically, Cboe adopted certain logical ports to allow for the delivery and/or receipt of trading messages—*i.e.,* orders, accepts, cancels, transactions, etc. Cboe established tiered pricing for BOE and FIX logical ports, tiered pricing for BOE Bulk ports, and flat prices for DROP, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. Cboe argued in its fee proposal that the proposed pricing more closely aligned its access fees to those of its affiliated exchanges, and reasonably so, as the affiliated exchanges offer substantially similar connectivity and functionality and are on the same platform that Cboe migrated to as part of its migration. Cboe also justified its pricing by stating that, ''. . . the Exchange believes substitutable products and services are in fact available to market participants, including, among other things, other options exchanges a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity and/or trading of any options product, including proprietary products, in the Over-the-Counter (OTC) markets.'' [33] Cboe stated in its proposal that,

> The rule structure for options exchanges are also fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (such as Fidelity, Schwab, and eTrade) were members of the options exchanges—they are not members of the Exchange or its affiliates, they do not purchase connectivity to the Exchange, and they do not purchase market data from the Exchange. Accordingly, not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the recent significant reduction in the number of broker-dealers that are members of all options exchanges.[34]

The proposal also referenced the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[35] wherein the Commission discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models. The Commission acknowledged that, even if an exchange were to exit the marketplace due to its proposed fee-related change, it would not significantly impact competition in the market for exchange trading services because these markets are served by multiple competitors.[36] Further, the Commission explicitly stated that ''[c]onsequently, demand for these services in the event of the exit of a competitor is likely to be swiftly met by existing competitors.'' [37] Finally, the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[38] Cboe concluded that the Exchange is subject to significant substitution-based competitive forces in pricing its connectivity and access fees.[39] Cboe stressed that the proof of competitive constraints does not depend on showing that members walked away, or threatened to walk away, from a product due to a pricing change. Rather, the very absence of such negative feedback (in and of itself, and particularly when coupled with positive feedback) is indicative that the proposed fees are, in fact, reasonable and consistent with the Exchange being subject to competitive forces in setting fees.[40]

[31] Cboe offers BOE Bulk Logical Ports. *See* Cboe's Fee Schedule. *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105). Cboe amended access and connectivity fees, including port fees. Specifically, Cboe adopted certain logical ports to allow for the delivery and/or receipt of trading messages—*i.e.,* orders, accepts, cancels, transactions, etc. Cboe established tiered pricing for BOE/FIX Logical Ports, with the lowest tier starting at $750 per port, per month for 1 to 5 ports, and for BOE Bulk Logical Ports with separate tiered pricing starting at $1,5000 per port, per month for 1 to 5 ports. Cboe also established flat prices for DROP, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports.

[32] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105).

[33] *Id.* at 71676.

[34] *Id.* at 71677.

[35] *See* Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.* at 71679.

[40] *Id.* at 71680.

MRX recently filed to establish port fees.[41] In SR–MRX–2023–05, MRX proposed to assess no fee for the first FIX Port obtained by an MRX Member and established fees for additional FIX Ports of $650 per port, per month for each subsequent port beyond the first port. MRX noted in SR–MRX–2023–05 that:

> Only MRX Members may utilize ports on MRX. Any market participant that sends orders to a Member would not need to utilize a port. The Member can send all orders, proprietary and agency, through one port to MRX. Members may elect to obtain multiple account numbers to organize their business, however only one account number and one port for orders and one port for quotes is necessary for a Member to trade on MRX. All other ports offered by MRX are not required for an MRX Member to meet its regulatory obligations.

MRX also established fees for OTTO Ports, which ports are identical to the ports being offered on BX, and priced them the same as the proposed OTTO fees for BX. MRX assesses an OTTO Port Fee of $650 per port, per month, per account number but does not offer the first OTTO Port at no cost because it was offering one FIX Port at no cost for order entry.

If the Commission were to apply a different standard of review to this proposal than it applied to other exchange fee filings, such as the Cboe or MRX fee filings,[42] it would create a burden on competition such that it would impair BX's ability to innovate new products, modernize its technology, and compete with other options markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[43] and subparagraph (f)(6) of Rule 19b–4 thereunder.[44]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BX–2024–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–BX–2024–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2024–006 and should be submitted on or before March 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–04295 Filed 2–29–24; 8:45 am]

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[41] *See* Securities Exchange Act No. 96824(February 7, 2023), 88 FR 8975 (February 10, 2023) (SR–MRX–2023–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 6).

[42] *See* notes 30 and 39 above.

[43] 15 U.S.C. 78s(b)(3)(A)(iii).

[44] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[45] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 12340]

Notice of Meeting of the President's Advisory Council on African Diaspora Engagement

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Department of State hereby provides notice of the next meeting of the President's Advisory Council on African Diaspora Engagement (''the Advisory Council'').

DATES: Monday, March 18, 2024.

ADDRESSES: This event will take place in-person in Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: For additional information and for those interested in participating, please contact Mr. Matthew Becker, Senior Foreign Affairs Officer in the Office of the Assistant Secretary, Bureau of African Affairs, U.S. Department of State by email at *BeckerMA@state.gov* or by phone at (202) 647–1790.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. 1001 *et seq.,* and 41 CFR 102–3.65, the Advisory Council will host a public plenary session meeting. The primary mission of the Advisory Council is to provide counsel to the President on enhancing the connections between the United States Government and the African diaspora within the

United States, aligning with the objectives outlined in the U.S. Strategy Toward Sub-Saharan Africa.

This meeting is for planning purposes for the Advisory Council to discuss 2024 priorities and review proposed initiatives, including programs to expand cultural and education exchange between Africa and the United States, and programs to increase participation of members of the African diaspora in the United States related to trade, investment, economic growth, and development programs relating to Africa. The Advisory Council will also review a calendar of additional upcoming events focused on African diaspora engagement, for potential Advisory Council member participation.

The activities of the Advisory Council encompass strategies to advance equity and opportunity for African diaspora communities, ways to support the United Nations' Permanent Forum on People of African Descent, programs and initiatives to strengthen cultural, social, political, and economic ties between African communities, the global African diaspora, and the United States, and programs and initiatives to increase participation of members of the African diaspora in the United States with regard to trade, investment, economic growth, and development programs relating to Africa.

Established in accordance with Executive Order 14089, the Advisory Council operates under the overarching authority of the Secretary of State and the Department of State, as outlined in Title 22 of the United States Code. Specifically, its mandate aligns with Section 2656 of that Title and adheres to the Federal Advisory Committee Act.

This meeting is open to the public. Priority for in-person seating will be given to members of the Advisory Council and remaining seating will be reserved on a first-come, first-served basis. Interested members of the public may reserve a seat by contacting Matthew Becker at *BeckerMA@state.gov.*

(Authority: 5 U.S.C. 1001 *et seq.* and 22 U.S.C. 2651a.)

Deniece L. Laurent-Mantey,

Executive Director, The President's Advisory Council on African Diaspora Engagement, Department of State.

[FR Doc. 2024–04301 Filed 2–29–24; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice: 12344]

Exchange Visitor Program

ACTION: Notice of an arrangement through a Memorandum of Understanding and modification of certain regulatory requirements.

SUMMARY: In accordance with the requirements of the Exchange Visitor Program (EVP) regulations, the Assistant Secretary for Educational and Cultural Affairs (ECA), U.S. Department of State, has modified certain regulatory provisions to permit Austrian dual/vocational education students or recent graduates of such programs to participate in internship and training programs in the United States, providing these exchange visitors an opportunity to gain broadening international experience.

DATES: This action was effective on January 31, 2024.

FOR FURTHER INFORMATION CONTACT: Rebecca Pasini, Deputy Assistant Secretary for Private Sector Exchange at 2200 C Street NW, SA–5, 5th Floor, Washington, DC 20522. or via email at *JExchanges@state.gov* or by telephone at (202) 826–4364.

SUPPLEMENTARY INFORMATION: A new program between the United States and the Republic of Austria has been established in accordance with existing Exchange Visitor Program (EVP) regulations (22 CFR part 62), including regulations applying to the Intern and Trainee categories (22 CFR 62.22). The program supports the purposes of the Fulbright-Hayes Act by increasing participants' understanding of American culture and society and enhancing Americans' knowledge of Austrian culture and skills through an open interchange of ideas. A key goal of the Fulbright-Hays Act, which authorizes the EVP Intern and Trainee categories of exchange, is that exchange visitors will return to their home countries and share their experiences in the United States.

The new exchange between the United States and Austria allows EVP participation of Austrian citizens aged 18 to 30 who are currently enrolled in (or are within 12 months of graduation at the time of program application) an Austrian accredited post-secondary or dual/vocational education program outside the United States. The Austrian dual/vocational education program is unique in that Austrian students conduct on-the-job trainingwhile they receive a combination of theoretical and practical training in vocational schools and colleges. Under current EVP regulations (22 CFR 62.22(d)(2)), trainees must be foreign nationals who have either a degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in their occupational field acquired outside the United States or five years of work experience in their occupational field acquired outside the United States. Under current regulations (22 CFR 62.22(d)(3)), intern exchange visitors must be enrolled in a foreign degree- or certificate-granting post-secondary academic institution or have recently graduated (within 12 months of program start date) from such an institution. Austrian exchange visitors will not need to have lengthy work experience or be enrolled in an academic institution in their home country prior to participating in a training or internship program.

Austrian exchange visitors will be placed for periods of between six and twelve months at up to two U.S. private companies or non-profit institutions. Austrian exchange visitors will have at least two rotations evenly divided over the length of their program. In the first rotation, Austrian exchange visitors may be placed in a routine (entry-level) assignment, but they must have progressively more responsibility in their second rotation. The second rotation is permitted to be at the same placement institution as the first but must give the exchange visitor more responsibility. If they so choose, Austrian exchange visitors may conduct two training rotations in more advanced assignments to cover the full length of their program without conducting an initial routine (entry-level) component.

Under the arrangement, the government of the Republic of Austria has established a reciprocal program permitting U.S. citizens aged 18 to 30 and who have recently graduated (within 12 months at the time of program application) from a U.S. degree, diploma, or certificate-granting educational institution to participate in a working holiday program. Participants may stay in Austria for up to 12 months, pursuing employment with one or more organizations to supplement their funds or for educational purposes without the need for a work permit while they are on the cultural exchange.

Lee A. Satterfield,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–04305 Filed 2–29–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12349]

Defense Trade Advisory Group; Notice of Membership

The U.S. Department of State's Bureau of Political-Military Affairs ''the Bureau'' is accepting membership applications for the Defense Trade Advisory Group (DTAG). The Bureau is interested in applications from subject matter experts from the United States defense industry, relevant trade and labor associations, and academic and foundation personnel.

The DTAG was established as an advisory committee under the authority of 22 U.S.C. 2656 and the Federal Advisory Committee Act, 5 U.S.C. 1001 *et seq.* (''FACA''). The purpose of the DTAG is to provide the Bureau of Political-Military Affairs with a formal channel for regular consultation and coordination with U.S. private sector defense exporters and defense trade specialists on issues involving U.S. laws, policies, and regulations for exports of defense articles, including technical data, and defense services. The DTAG advises the Bureau on its support for and regulation of defense trade to help ensure that impediments to legitimate exports are reduced while the foreign policy and national security interests of the United States continue to be protected and advanced in accordance with the Arms Export Control Act (AECA), as amended. Major topics addressed by the DTAG include (a) policy issues on defense trade and technology transfer; (b) regulatory and licensing procedures applicable to defense articles, including technical data, and defense services; (c) technical issues involving the U.S. Munitions List (USML); and (d) questions related to the implementation of the AECA and International Traffic in Arms Regulations (ITAR).

Members are appointed by the Assistant Secretary of State for Political-Military Affairs on the basis of individual qualifications and technical expertise. Past members include representatives of the U.S. defense industry, relevant trade and labor associations, and academic and foundation personnel. In accordance with the DTAG Charter, all DTAG members must be U.S. citizens. DTAG members are expected to serve a consecutive two-year term, which may be renewed or terminated at the discretion of the Assistant Secretary of State for Political-Military Affairs. DTAG members are expected to represent the views of their organizations, while also demonstrating an appreciation for the Department's mission to ensure that commercial exports of defense articles and defense services advance U.S. national security and foreign policy objectives. DTAG members are expected to understand complex issues related to defense trade and industrial competitiveness and are expected to advise the Bureau on these matters.

DTAG members' responsibilities include:

- Making recommendations in accordance with the DTAG Charter and the FACA.
- Making policy and technical recommendations within the scope of the U.S. export control regime as set forth in the AECA, the ITAR, and appropriate directives.

Please note that DTAG members may not be reimbursed for travel, per diem, and other expenses incurred in connection with their duties as DTAG members.

How to apply: Applications in response to this notice must contain the following information: (1) Name of applicant; (2) affirmation of U.S. citizenship; (3) organizational affiliation and title, as appropriate; (4) mailing address; (5) work telephone number; (6) email address; (7) resume; and (8) summary of qualifications for DTAG membership.

This information may be provided via two methods:

- *Emailed to the following address: DTAG@State.Gov.* In the subject field, please write, ''DTAG Membership Application.''
- *Send hardcopy to the following address:* Paula Harrison, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112. If sent via regular mail, we recommend you call Ms. Harrison (202–663–3310) to confirm she has received your package.

All applications must be postmarked by March 26, 2024.

Paula C. Harrison,

Designated Federal Officer, Defense Trade Advisory Group, U.S. Department of State.

[FR Doc. 2024–04309 Filed 2–29–24; 8:45 am]

BILLING CODE 4710–25–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36760]

Gulf & Atlantic Railways, LLC—Intra-Corporate Family Transaction Exemption—Chesapeake and Indiana Railroad Company, LLC and Northern Indiana Railroad Company, LLC

Gulf & Atlantic Railways, LLC (G&A), has filed a verified notice of exemption for an intra-corporate family transaction under 49 CFR 1180.2(d)(3), for the benefit of Chesapeake and Indiana Railroad Company, LLC (CKIN), and Northern Indiana Railroad Company, LLC (NIRC), both Class III railroads. G&A seeks authority for an intra-corporate family transaction pursuant to which CKIN and NIRC will merge, with CKIN the surviving carrier. CKIN and NIRC are controlled directly by G&A and indirectly by Macquarie Infrastructure Partners V GP, LLC, a Macquarie Infrastructure Partners V fund vehicle, and MIP V Rail, LLC.[1]

According to the verified notice, NIRC owns 32.97 miles of rail line in Indiana but has never conducted freight rail operations on the line, has no rail employees, and does not own or lease any rolling stock. The verified notice states that CKIN currently leases and operates 27.52 miles of NIRC's rail line.[2] Following the merger, the lease agreement will terminate, and NIRC's separate corporate existence will cease. G&A states that the proposed merger of CKIN and NIRC will consolidate ownership and operation of the NIRC line in a single entity, simplify G&A's corporate structure, promote efficient management, and eliminate the need to maintain the current lease arrangement between NIRC and CKIN. According to the verified notice, CKIN will continue to operate the NIRC line in the same manner it does today.

G&A states that the plan of merger that will govern the proposed transaction does not include any provision that would limit the future interchange of traffic with any third-party connecting carrier, nor is NIRC's

[1] G&A is an affiliate of Macquarie Infrastructure Partners V GP, LLC. *See Macquarie Infra. Partners V GP, LLC—Control Exemption—Camp Chase Rail, LLC,* FD 36685 (STB served Apr. 7, 2023); *Macquarie Infra. Partners V GP, LLC—Control Exemption—N. Ind. R.R.,* FD 36729 (STB served Dec. 22, 2023).

[2] The verified notice states that CKIN discontinued service over the remaining 5.45-mile segment of NIRC's line in 2017. *See Chesapeake & Ind. R.R.—Discontinuance of Service Exemption—in Starke Cnty., Ind.,* AB 1259X (STB served Nov. 28, 2017).

line subject to any existing agreement that imposes such a restriction.[3]

The verified notice states that following the proposed transaction, CKIN will continue to operate the 27.52-mile NIRC line in the same manner as it does today and that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(3).

Unless stayed, the exemption will be effective on March 21, 2024 (30 days after the verified notice was filed). The verified notice states that G&A, CKIN, and NIRC intend to consummate the proposed transaction as soon as practicable after the effective date of the exemption.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all the carriers involved are Class III rail carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than March 14, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36760, must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on G&A's representative, Terrance M. Hynes, Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005.

According to G&A, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: February 26, 2024.

[3] G&A filed with its verified notice an unexecuted copy of the agreement and plan of merger.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2024–04340 Filed 2–29–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Maps; Martha's Vineyard Airport

ACTION: Notice of acceptance of a noise exposure map.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Martha's Vineyard Airport Commission for Martha's Vineyard Airport under the provisions of the Aviation Safety and Noise Abatement Act are in compliance with applicable requirements.

DATES: The FAA's determination on the noise exposure maps is effective February 26, 2024.

FOR FURTHER INFORMATION CONTACT: Cheryl Quaine, Federal Aviation Administration, New England Regional Office Environmental Protection Specialist, Airports Division, Federal Aviation Administration, 1200 District Avenue, Burlington, Massachusetts 01803. Phone number: 781–238–7613.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Martha's Vineyard Airport are in compliance with applicable requirements of 14 CFR part 150, effective (Note 1). Under the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act'') (49 U.S.C. 47503), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by Martha's Vineyard Airport Commission. The specific maps under consideration were ''Figure 6–1 Existing Conditions (2023) NEM page 6–3 and Figure 6–2 Forecast Conditions (2028) NEM page 6–5 in the submission. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on February 26, 2024.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished. Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Martha's Vineyard Airport, 71 Airport Rd., West Tisbury, MA 02575

Federal Aviation Administration, New England Region, Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in New England Regional Office, Burlington, MA, on February 26, 2024.

Julie Seltsam-Wilps,

Deputy Director, ANE–600.

[FR Doc. 2024–04334 Filed 2–29–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2023–2061]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Commercial Air Tour Operator Reports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments; correction.

SUMMARY: The FAA published a document in the **Federal Register** of February 24, 2024, concerning request for comments on a request for Office of Management and Budget (OMB) approval to renew an information collection. The document contained an incorrect sentence.

FOR FURTHER INFORMATION CONTACT: Sandra Fox by email at: *sandra.y.fox@faa.gov;* phone 202–267–0928.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 26, 2024, in FR Doc. 2024–03880, on page 14126 in the second column, correct the last sentence of the Background section to read:

Operators complete the information on a reporting template and provide it either by email or mail to the agencies.

Issued in Washington, DC, on February 26, 2024.

Sandra Fox,

Environmental Protection Specialist, FAA Office of Environment and Energy.

[FR Doc. 2024–04315 Filed 2–29–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0111; FMCSA–2021–0017]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for nine individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on March 4, 2024. The exemptions expire on March 4, 2026. Comments must be received on or before April 1, 2024.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2019–0111, or Docket No. FMCSA–2021–0017 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2019–0111 or FMCSA–2021–0017) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2019–0111 or Docket No. FMCSA–2021–0017), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2019–0111 or FMCSA–2021–0017) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2019–0111 or FMCSA–2021–0017) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to

help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

The nine individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the nine applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The nine drivers in this notice remain in good standing with the Agency. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of March and are discussed below.

As of March 4, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Charles Armand (TX)
Baldemar Barba (TX)
Jeremy Descloux (WA)
Edward Larizza (CA)
Rage Muse (MN)
Michael Paul (IL)
Jodyann Nipper (IA)
William Rivas (CA)
Kenneth Salts (OH)

The drivers were included in docket number FMCSA–2019–0111 or FMCSA–2021–0017. Their exemptions are applicable as of March 4, 2024 and will expire on March 4, 2026.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5T; and (2) report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the nine exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–04337 Filed 2–29–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0008]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 16 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before April 1, 2024.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2024–0008 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2024–0008) in the keyword box and click ''Search.'' Next, choose the only notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2024–0008), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2024-0008.* Next, sort the results by ''Posted (Newer-Older),'' choose the only notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2024–0008) in the keyword box and click ''Search.'' Next, choose the only notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 16 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Cesar Anicama

Cesar Anicama, 43, holds a class D driver's license in New York.

Dalton Atkinson

Dalton Atkinson, 23, holds a class C driver's license in Texas.

Carl Bordeaux

Carl Bordeaux, 40, holds a class D driver's license in South Carolina.

Jose Gutierrez

Jose Gutierrez, 39, holds a class C driver's license in Maryland.

Francisco Kelly

Francisco Kelly, 46, holds a class D driver's license in Virginia.

Joseph Latino

Joseph Latino, 24, holds a class E driver's license in Louisiana.

Brian Levinson

Brian Levinson, 56, holds a class E driver's license in Florida.

Dre Lowes

Dre Lowes, 26, holds a class C driver's license in Maryland.

Vonseth Ngethsum

Vonseth Ngethsum, 32, holds a class A commercial driver's license (CDL) in Florida.

Henry Peralta

Henry Peralta, 31, holds a class C driver's license in Texas.

Naren Ramnauth

Naren Ramnauth, 47, holds a class C driver's license in California.

Karl Sabate

Karl Sabate, 36, holds a class CM1 driver's license in California.

Terrell Sumers

Terrell Sumers, 36, holds a class E driver's license in Louisiana.

Mark Thronson

Mark Thronson, 34, holds a class C driver's license in California.

Rodrigues Tilley

Rodrigues Tilley, 35, holds a class D driver's license in Alabama.

Gerald Wright

Gerald Wright, 54, holds a class DA CDL in Kentucky.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–04336 Filed 2–29–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0244]

Hours of Service; Arbert Ibraimi; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Arbert Ibraimi to be exempt from the requirement that drivers of commercial motor vehicles (CMVs) use an electronic logging device (ELD) to record their hours of service (HOS). The applicant requests to use paper logs instead of an ELD for 12 months and asserts that because he is a new business operating as an owner-operator he cannot afford an ELD. FMCSA requests public comment on the applicant's request for exemption.

DATES: Comments must be received on or before April 1, 2024.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2023–0244 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2023–0244) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL–14 FDMS, which can be reviewed under the ''Department Wide System of Records Notices'' link at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.* The comments are posted without edit and are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 385–2415; *Bernadette.walker@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2021–0244), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number ''FMCSA–2023–0244'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for

copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

Arbert Ibraimi requests a one-year exemption from the ELD requirements in 49 CFR 395.8(a)(1(i). Under section 395.8(a)(1)(i) most drivers that operate CMVs in interstate commerce are required to use an ELD to record their HOS. The applicant asserts that he is running a new business operating a single CMV as an owner-operator and has limited funds to support the purchase of an ELD. The applicant states that he would use the funds saved from not implementing an ELD in the single CMV to monitor the safety of operations and to incorporate safety management controls into his operation.

A copy of Arbert Ibraimi's application for exemption is available for review in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Arbert Ibraimi's application for an exemption from the ELD requirement under 49 CFR 395.8(a). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–04307 Filed 2–29–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Solicitation of Applications for the Award of One Tanker Security Program Operating Agreement

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of application period for the Tanker Security Program (TSP).

SUMMARY: The Maritime Administration (MARAD) requests applications from eligible candidates for one TSP operating agreement. The Tanker Security Program is comprised of a fleet of active, commercially viable, militarily useful, and privately owned product tank vessels. The fleet provides for national defense and other security requirements and maintains a United States presence in international commercial shipping. This solicitation for applications provides, among other things, application criteria and a deadline for submitting applications for the enrollment of one vessel into the TSP.

DATES: Applications for enrollment must be received no later than April 30, 2024. Applications should be submitted to the address listed in the **ADDRESSES** section below.

ADDRESSES: Applications may be submitted electronically to *sealiftsupport@dot.gov* or in hard copy to the Tanker Security Program, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Application forms are available upon request or may be downloaded from MARAD's website at *www.maritime.dot.gov* under National Security/Strategic Sealift/Tanker Security Program.

FOR FURTHER INFORMATION CONTACT: David Hatcher, Director, Office of Sealift Support, Maritime Administration, Telephone (202) 366–0688. For legal questions, call Joseph Click, Office of Chief Counsel, Division of Maritime Programs, Maritime Administration, (202) 366–5882.

SUPPLEMENTARY INFORMATION: Section 53402(a) of Title 46, United States Code, requires that the Secretary of Transportation (Secretary), in consultation with the Secretary of Defense (SecDef), establish a fleet of active, commercially viable, militarily useful, privately-owned product tank vessels to meet national defense and other security requirements. The TSP provides a stipend to tanker operators of U.S.-flagged vessels that meet certain qualifications. Payments to participating operators are limited to $6 million per ship, per fiscal year and are subject to annual appropriations. Participating operators are required to make their commercial transportation resources available upon request of the SecDef during times of war or national emergency.

Application Criteria

Section 53403(b)(2)(A) of Title 46, United States Code, and MARAD's implementing regulation at 46 CFR 294.9, direct the Secretary in consultation with the SecDef to consider applicant vessel qualifications and give priority to applications based on the following criteria:

(1) Vessel capabilities, as established by SecDef;

(2) Applicant's record of vessel ownership and operation of tanker vessels; and

(3) Applicant's citizenship, with preference for Section 50501 Citizens.

Vessel Requirements

Acceptable vessels for a TSP Operating Agreement must meet the requirements of 46 U.S.C. 53402(b) and 46 CFR 294.9. The Commander, USTRANSCOM, has provided vessel suitability standards for eligible TSP vessels for use during the application selection process. The following suitability standards, consistent with the requirements of 46 U.S.C. 53402(b)(5), will apply to vessel applications:

- Medium Range (MR) tankers between 30,000–60,000 deadweight tons, with fuel cargo capacity of 230,000 barrels or greater;

- Deck space and size to accept installation of Consolidation (CONSOL) stations, two on each side for a total of four stations;
- Ability to accommodate up to an additional 12 crew for CONSOL, security, and communication crew augmentation;
- Communication facilities capable of integrating secure communications equipment;
- Does not engage in commerce or acquire any supplies or services if any proclamation, Executive order, or statute administered by Office of Foreign Assets Control (OFAC), or if OFAC's regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States, except as authorized by the OFAC in the Department of the Treasury;
- Operate in the Indo-Pacific region;
- Maximum draft of no more than 44 feet. Preference will be given to vessels that can transport the most fuel at the shallowest draft;
- Sustained service speed of at least 14 knots, with higher speeds preferred;
- Carry only clean refined products; and
- Double-hulled and capable of carrying more than two separated grades of refined petroleum products with double valve protection between tanks.

National Security Requirements

The applicant chosen to receive a TSP Operating Agreement will be required to enter into an Emergency Preparedness Agreement (EPA) in accordance with 46 U.S.C. 53407, or such other agreement as may be approved by the Secretaries. The current EPA approved by the Secretary and SecDef is the Voluntary Tanker Agreement (VTA), publicly available for review at 87 FR 67119 (November 7, 2022).

Documentation

A vessel chosen to receive the TSP Operating Agreement must be documented as a U.S.-flag vessel under 46 U.S.C. chapter 121 to operate under the Operating Agreement. An applicant proposing a vessel registered under the laws of a foreign country at the time of application must demonstrate the vessel owner's intent to have the vessel documented under U.S. law and must demonstrate that the vessel is U.S.-registered by the time the applicant enters into a TSP Operating Agreement for the vessel. Proof of U.S. Coast Guard vessel documentation and inspection and all relevant charter and management agreements for a chosen vessel must be approved by MARAD before the vessel will be eligible to operate under a TSP Operating Agreement and receive TSP payments.

Vessel Operation

A vessel selected for award of a TSP Operating Agreement must be operated in foreign commerce, in mixed foreign commerce and domestic trade of the United States permitted under a registry endorsement issued under 46 U.S.C. 12111, or between U.S. ports and those points identified in 46 U.S.C. 55101(b), or in foreign-to-foreign commerce, and must not otherwise operate in the coastwise trade of the United States. Further, no vessel may operate under a TSP Operating Agreement while it is also operating under charter to the U.S. Government for a period that, together with options, exceeds 180 continuous days.

Protection of Confidential Commercial or Financial Information

If the application includes information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Commercial or Financial Information (CCFI)''; (2) mark each affected page ''CCFI''; and (3) highlight or otherwise denote the CCFI portions. MARAD will protect such information from disclosure to the extent allowed under applicable law. In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Award of Operating Agreements

MARAD will make every effort to expedite the review of applications and the award of a TSP Operating Agreement. MARAD, however, does not guarantee the award of a TSP Operating Agreement in response to applications submitted under this Notice. If no awards are made, or an application is not selected for an award, the applicant will be provided with a written reason for why the application was denied.

(Authority: 46 U.S.C. chapter 534, 49 CFR 1.92 and 1.93, 46 CFR 294)

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2024–04352 Filed 2–29–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2023–0071]

Pipeline Safety: Request for Special Permit; DTM Gas Storage Company

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit received from the DTM Gas Storage Company (DTM). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by April 1, 2024.

ADDRESSES: Comments should reference the docket number for this special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal

information provided, are posted without changes or edits to *http://www.Regulations.gov.*

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 treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Earnest Scott by telephone at 202–909–7529, or by email at *earnest.scott@dot.gov.*

SUPPLEMENTARY INFORMATION:

PHMSA received a special permit request from DTM, a subsidiary of DT Midstream, Inc., on July 14, 2023, seeking a waiver from the Federal pipeline safety regulations in 49 CFR 192.625(b), which requires a gas transmission pipeline to be odorized in a Class 3 or a Class 4 location.

The proposed special permit would allow DTM to operate the W10–28 and Shelby 2 Pipelines without odorization. The W10–28 and Shelby 2 Pipelines are 20-inch-diameter natural gas transmission pipelines, 7.3 miles in length, located in Macomb County, Michigan. The maximum allowable operating pressure for the W10–28 and Shelby 2 Pipelines is 2,160 pounds per square inch gauge.

The special permit request, proposed special permit with conditions, and draft environmental assessment (DEA) for the above listed DTM pipeline segments are available for review and public comment in Docket Number PHMSA 2023–0071. PHMSA invites interested persons to review and submit comments on the special permit request, proposed special permit with conditions, and DEA in the docket. Please submit comments on any potential safety, environmental, or other relevant consideration implicated by the special permit request. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing date will be evaluated if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2024–04290 Filed 2–29–24; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–OST–2024–0028]

Advisory Committee on Transportation Equity (ACTE); Notice of Public Meeting

AGENCY: Office of the Secretary, Department of Transportation

ACTION: Notice of public meeting.

SUMMARY: DOT OST announces a hybrid meeting of ACTE's Wealth Creation Subcommittee, which will take place via Zoom Webinar and in-person.

DATES: The meeting will be held Friday, March 15, 2024, from 12 to 1 p.m. eastern time. Requests for accommodations because of a disability must be received by Friday, March 8. Requests to submit questions must be received no later than Friday, March 8. The registration form will close on Thursday, March 14.

ADDRESSES: The meeting will be held via Zoom and in-person at the Washington Marriot at Metro Center, 775 12th Street NW, Washington, DC 20005. Those members of the public who would like to participate virtually should go to *https://www.transportation.gov/mission/civil-rights/advisory-committee-transportation-equity-meetings-materials* to access the meeting, a detailed agenda for the entire meeting, meeting minutes, and additional information on ACTE and its activities.

FOR FURTHER INFORMATION CONTACT: Sandra D. Norman, Senior Advisor and Designated Federal Officer, Departmental Office of Civil Rights, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (804) 836–2893, *ACTE@dot.gov.* Any ACTE-related request or submissions should be sent via email to the point of contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Purpose of the Committee

ACTE was established to provide independent advice and recommendations to the Secretary of Transportation about comprehensive, interdisciplinary issues related to civil rights and transportation equity in the planning, design, research, policy, and advocacy contexts from a variety of transportation equity practitioners and community leaders. Specifically, the Committee will provide advice and recommendations to inform the Department's efforts to:

Implement the Agency's Equity Action Plan and Strategic Plan, helping to institutionalize equity into Agency programs, policies, regulations, and activities;

Strengthen and establish partnerships with overburdened and underserved communities who have been historically underrepresented in the Department's outreach and engagement, including those in rural and urban areas;

Empower communities to have a meaningful voice in local and regional transportation decisions; and

Ensure the compliance of Federal funding recipients with civil rights laws and nondiscrimination programs, policies, regulations, and activities.

Meeting Agenda

The agenda for the meeting will consist of:

Opening remarks
Wealth Creation background
Review of existing recommendations
Feedback and new recommendations from attendees
USDOT updates
Next steps and closing remarks
Meeting Participation

Advance registration is required. Please register at *https://*

usdot.zoomgov.com/webinar/register/WN_ynlFzk6oTIWrDnuSlwKhnw by the deadline referenced in the **DATES** section. The meeting will be open to the public for its entirety. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section. Questions from the public will be answered during the public comment period only at the discretion of the ACTE Wealth Creation subcommittee co-chairs and designated Federal officer. Members of the public may submit written comments and questions to the point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section on the topics to be considered during the meeting by the deadline referenced in the **DATES** section.

Dated: February 27, 2024.

Irene Marion,

Director, Departmental Office of Civil Rights.

[FR Doc. 2024–04394 Filed 2–29–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Burden Related to Form 13818, Limited Payability Claim Against the United States for Proceeds of an Internal Revenue Refund Check

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 public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden associated with Form 13818, *Limited Payability Claim Against the United States for Proceeds of an Internal Revenue Refund Check.*

DATES: Written comments should be received on or before April 30, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Please include, ''OMB Number: 1545–2024—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limited Payability Claim Against the United States for Proceeds of An Internal Revenue Refund Check.

OMB Number: 1545–2024.

Document Number: 13818.

Abstract: Form 13818, *Limited Payability Claim Against the United States for the Proceeds of an Internal Revenue Refund Check,* is sent to the payee (taxpayer). This form is designed to provide taxpayers a method to file a claim for a replacement check when the original check is over 12 months old.

Current Actions: There are no changes to the burden previously approved by OMB. This request is to extend the current approval for another 3 years.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Businesses, and other for-profit organizations.

Estimated Number of Respondents: 6,000.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 6,000.

The following paragraph applies to all the collections of information covered by this notice:

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

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: February 27, 2024.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2024–04378 Filed 2–29–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Renewal of the Art Advisory Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Renewal of the Art Advisory Panel of the Commissioner of Internal Revenue.

SUMMARY: The charter for the Art Advisory Panel has been renewed for a two-year period beginning January 24, 2024.

FOR FURTHER INFORMATION CONTACT: Robin B. Lawhorn, 400 West Bay Street, Suite 252, Jacksonville, FL 32202. Telephone (904) 661–3198 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. 1009, that the Art Advisory Panel of the Commissioner of Internal Revenue, a necessary committee that is in the public interest, has been renewed for an additional two years beginning on January 24, 2024.

The Panel helps the Internal Revenue Service review and evaluate the acceptability of property appraisals

submitted by taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1986, as amended.

For the Panel to perform this function, Panel records and discussions must include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue Code.

Daniel I. Werfel,

Commissioner of Internal Revenue.

[FR Doc. 2024–04314 Filed 2–29–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Forms 3921 and 3922

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 public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden associated with information reporting requirements under Internal Revenue Service code section 6039, Form 3921, *Exercise of an Incentive Stock Option Under Section 422(b),* and Form 3922, *Transfer of Stock Acquired through an Employee Stock Purchase Plan Under Section 423(c).*

DATES: Written comments should be received on or before April 30, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Please include, ''OMB Number: 1545–2129—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Reporting Requirements under Code sec. 6039.

OMB Number: 1545–2129.

Document Number: Forms 3921 and 3922.

Abstract: Form 3921 is a copy of the information return filed with the Internal Revenue Service by the corporation which transferred shares of stock to a recipient. Form 3922 is used by the corporation to record a transfer of the legal title of a share of stock acquired by the employee where the stock was acquired pursuant to the exercise of an option described in Internal Revenue Code section 423(c). Treasury Decision 9470 contains the final regulations relating to the return and information statement requirements under Internal Revenue Code section 6039. These regulations reflect changes to section 6039 made by section 403 of the Tax Relief and Health Care Act of 2006.

Current Actions: There are no changes to the burden previously approved by OMB. This request is to extend the current approval for another 3 years.

Type of Review: Extension of a currently approved collection.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 51,000.

Estimated Time per Respondent: 29 min.

Estimated Total Annual Burden Hours: 25,505.

The following paragraph applies to all the collections of information covered by this notice:

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

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: February 27, 2024.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2024–04393 Filed 2–29–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans Legacy Grants Program; Funding Availability

AGENCY: Department of Veterans Affairs.

ACTION: Notice of funding availability.

SUMMARY: The Department of Veterans Affairs (VA) National Cemetery Administration (NCA) is awarding grants for a maximum of $400,000 per awardee through the Veterans Legacy Grants Program (VLGP) to provide funding to educational institutions and other eligible entities to conduct cemetery research and produce educational tools for the public to use and learn about the histories of Veterans interred in VA national cemeteries and VA grant-funded State and Tribal Veterans' cemeteries. This notice includes information about the process for applying for a VLGP grant; criteria for evaluating applications; priorities related to the award of grants; and other requirements and guidance regarding VLGP grants. Note: Fiscal Year 2024 grants will only be awarded if funding

is allocated to this program following the Fiscal Year 2024 Continuing Resolution.

DATES: Applications for grants under VLGP must be received by the VLGP Office by 5 p.m., eastern time, on April 1, 2024. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour. VA will treat any application that is received after the deadline as ineligible for consideration. Applicants should take this requirement into account and submit their materials early to avoid the risk of unanticipated delays, computer service outages or other submission-related problems that might result in ineligibility. Successful applicants will be notified within approximately 60 days following the application deadline. The VLGP grant award will be awarded in fiscal year (FY) 2024 and work under the award must start in FY 2024.

ADDRESSES: For a Copy of the Application Package: The required documentation for an application is outlined under Section IV. (Application Documentation Required) of this Notice of Funding Availability (NOFA). Questions should be referred to the VLGP Office by email at: *VLGP@va.gov.* For detailed VLGP information and requirements, see 38 CFR 38.710 through 38.785.

For Submission of an Application Package: Applicants must submit applications electronically by following instructions found at: *www.grants.gov.*

For Technical Assistance: Information regarding how to obtain technical assistance with the preparation of a grant application can be found at: *www.grants.gov* or applicants may email *VLGP@va.gov.*

FOR FURTHER INFORMATION CONTACT: John Williams, Senior Grants Management Specialist, Veterans Legacy Grants Program, National Cemetery Administration, Department of Veterans Affairs, *VLGP@va.gov* or 314–348–4073. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: *Funding Opportunity Title:* Veterans Legacy Grants Program.

Announcement Type: Competitive.

Funding Opportunity Number: VA–NCA–VLGP–FY2024.

Assistance Listing: 64.204, VA Veterans Legacy Grants Program.

I. Funding Opportunity Description

A. *Purpose:* Funding for VLGP grants under this notice is authorized by 38 U.S.C. 2400 note (Grants for Cemetery Research and the Production of Educational Materials). This notice announces the availability of funding to applicants found eligible to receive a VLGP grant to tell the stories of Veterans interred in VA national cemeteries or VA grant-funded State, Territorial or Tribal cemeteries, especially Veterans who have significant connection to the local community and Veterans from historically underrepresented groups, to include Veterans or Service members underrepresented by race, ethnicity, sexual orientation, or gender identity, from any period of American history, so they are honored in perpetuity.

Applicants may propose to conduct the research within the context of any established academic discipline, or the research may be interdisciplinary. Eligible applicants are institutions of higher learning, educational institutions, local educational agencies, or non-profit entities. Successful applicants will:

1. Meet VLGP's mission to commemorate the Nation's Veterans and Service members through the discovery and sharing of their stories. VLGP encourages students and teachers at the K–12 levels and universities around the country to immerse themselves in the rich historical resources found within one or more of VA's 155 national cemeteries or one or more of the 122 VA grant-funded Veterans cemeteries.

2. Include a study of Veterans or Service members interred in one of VA's national cemeteries or in one of the VA grant-funded cemeteries.

3. Foster engagement in the communities surrounding one or several of the national cemeteries or VA grant-funded cemeteries.

4. Tell the stories of Veterans interred in these cemeteries, especially Veterans who have significant connection to the local community and Veterans from historically underrepresented groups, to include Veterans or Service members underrepresented by race, ethnicity, sexual orientation, or gender identity from any period of American history.

5. Utilize the Veterans Legacy Memorial (*www.va.gov/remember*), NCA's online memorial that honors Veterans interred in VA national cemeteries; VA grant-funded Veterans cemeteries; Department of Defense-managed cemeteries (including Arlington National Cemetery); and two National Park Service national cemeteries.

B. *Priorities:* Competitive Preference Priorities (CPP) for FY 2024 and any subsequent year in which we make awards from the list of applications from this annual competition will align with specific VLGP initiatives, which will be noted as CPPs. NCA will award up to five priority points for each CPP addressed by the application up to a maximum of ten priority points. Each CPP must be described in a one-page abstract submitted with the application. If applicants wish to be considered for CPP points, applicants must include, in a one-page abstract submitted with the application, a statement indicating which of the CPPs are addressed. If an applicant addresses CPPs, this information must also be listed on the VLGP Profile Form. To earn CPPs, submitted applications will:

1. Successfully showcase and creatively highlight Veterans or Service members who have never been studied or researched in previous VLGP projects and are interred in qualifying cemeteries and in a new geographic region where a VLGP project has not had a presence.

2. Demonstrate sustainability potential beyond VLGP resources and delineate how elements of the project will have a multiplier effect to support this sustainability, including the continuing impact beyond the life of a project or securing other donor support following VLGP funding.

C. *Total Available Funds:* The total funds allocated for VLGP in FY 2024 is $2.2 million. VA may award additional VLGP grant awards depending on the availability of funds and the number of competitive grant applications received.

VA will only accept one application per applicant. If an applicant submits multiple applications, VA reserves the right to select which application to consider based on the submission dates and times or based on other factors included in 38 CFR 38.710 through 38.785.

D. *Eligible Recipients:* Applicants must be eligible entities that meet one of the definitions in 38 CFR 38.715 for an institution of higher learning, educational institution, local educational agency, or non-profit entity.

II. Award Information

A. *Allocation of Funds:* $2.2 million in Federal funding is available under this notice with a maximum award up to $400,000 per grant. Additional overall Federal funding may be available at the discretion of NCA. Each VLGP grant must be awarded in FY 2024, and the period of performance under the grant must have a start date that is also within FY 2024. The number of grants awarded during this period is at the discretion of VA.

B. *Funding Restrictions:* No part of an award under this notice may be used for a course buyout, and the grant funds shall not be used to substitute a class that a professor is required to teach during an academic year.

C. *Funding Limitations:* VA's decisions will be based on factors such

as need, geographic dispersion and availability of funding.

III. Application and Submission Information

A. *Obtaining a Grant Application:* The required documentation for an application submission is outlined in Section IV. (Application Documentation Required) of this NOFA. All applications must be submitted through *www.grants.gov,* which will outline required forms and documentation. Registration information is available at: *www.grants.gov.* Questions should be referred to the VLGP Office at: *VLGP@va.gov.* For detailed VLGP information and requirements, see 38 CFR 38.710 through 38.785.

B. *Submitting a Grant Application:* Applicants must ensure that they include all required documents in their electronic application submission, carefully follow the format and provide the information requested and described below. Submission of an application that contains conflicting information or is incomplete, untimely, or incorrectly formatted will result in the application being rejected. Applicants must submit applications electronically by following instructions found at *www.grants.gov.* Applications must be submitted as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

C. *Unique Entity Identifier and System for Award Management (SAM):* Applicants (unless the applicant is an individual, the Federal awarding agency has exempted the applicant from the following requirements under 2 CFR 25.110(c), or the Office of Management and Budget has allowed a class exception under 2 CFR 25.110(d)) are required to: (i) be registered in SAM before submitting its application; (ii) provide a valid unique entity identifier in its application; and (iii) provide proof of an active and updated SAM registration at the time of application submission, which must be maintained throughout the award period as a continuing condition of eligibility. The Federal awarding agency will not make a Federal award to an applicant that does not have an active and updated SAM registration at the time of application submission.

IV. Application Documentation Required

A. *Application for Federal Assistance (SF–424) and Supporting Documents:* Applicants are required to complete the SF–424 and attach the following supporting documents following application instructions outlined on *www.grants.gov.*

1. *Project Abstract:* In 500 words or less, double-spaced, 12-point Times New Roman font, provide a brief abstract of the proposed project. As applicable, include other information relevant to an understanding of the overall project and specify if you wish to be considered for CPP points set out in Section I.B. (*Priorities*) of this NOFA.

2. *Project Proposal:* In 1,200 words or less, double-spaced, 12-point Times New Roman font, include a narrative outlining the proposed plan for the project and include a detailed timeline for the tasks outlined in the project description and proposed milestones. See Section IV.C. (*Project Proposals*) for additional information.

3. *Expertise and Capacity:* In 500 words or less, double-spaced, 12-point Times New Roman font, include a description of the applicant's ability and capacity to administer the project. This should include any evidence of past experience with projects similar in scope as defined by this NOFA, to include descriptions of the engagement model; examples of successful leadership and management of a project of similar (or greater) scale and budget; or related work in this field.

4. *Proposed Budget:* In 500 words or less, double-spaced, 12-point Times New Roman font, provide the proposed budget and budget narrative, which should identify and justify all costs and proposed expenditures, to include additional compensation and honoraria (and to whom such payments would be made); equipment costs; production costs; and travel costs. The word count does not include charts, graphs, or spreadsheets an applicant may choose to provide as additional attachments. Applicants may include indirect costs as part of their proposed budget. Applicants with a negotiated indirect cost rate with a cognizant Federal agency should include a copy of the approved indirect cost rate agreement as an attachment to the budget and may utilize this rate when preparing and submitting a proposed budget. Those applicants that do not have a current negotiated indirect cost rate agreement with a cognizant Federal agency may elect to charge the de minimis rate listed in 2 CFR 200.414.

5. *Project Team:* The applicant must provide a narrative description of anticipated project team members and any extramural partner(s), including the qualifications and responsibilities of the principal investigator, the co-principal investigators, and any extramural partner entity.

B. *Eligibility:* Applicants must meet definitions for eligible recipients in 38 CFR 38.715(c) and provide supporting documentation of status (for example, Section 503(c)(3) status, consolidated State plan).

C. *Project Proposals:* Project Proposals should support the memorialization of the Nation's Service members and Veterans enshrined in national cemeteries or VA grant-funded cemeteries in the following areas:

1. *Outreach:* A framework for digital and non-digital outreach based on student research focused on a VA national cemetery (or cemeteries) or a VA grant-funded State, Territorial or Tribal cemetery (or cemeteries).

2. *Educational Materials:* A framework of digital instructional materials relevant to the grade level of K–12 students involved (*e.g.,* lesson plans, learning guides). Alternatively, materials intended for general education of the public may be developed in conjunction with or in lieu of the above, but preference will be given to proposals that include development of instructional materials intended for K–12 audiences.

3. *Veterans Legacy Memorial:* Applicants shall teach professional historical research methods, which should result in participant-generated biographies that program participants, as appropriate, will upload into NCA's Veterans Legacy Memorial (*www.va.gov/remember*). The goal here is to expand biographical content within the Veterans Legacy Memorial that is written by students, teachers, and other program participants.

Materials produced under this grant program must be based on primary research on the Service members and/or Veterans interred or memorialized in VA's national cemeteries or VA grant-funded cemeteries, conducted by students under the guidance of an appropriate educational professional (*e.g.,* licensed teacher, tenure-track professor with terminal degree or program officer of an educational non-profit entity). The research must be produced in formats accessible to students, teachers, scholars, and the American public. This research may be conducted within the context of any established academic discipline or may be interdisciplinary as long as the research conveys findings about individual Service members or Veterans that expands awareness and knowledge of those whose stories have not been told before. NCA's VLGP is committed to memorializing all Service members and Veterans, but Service members and Veterans from underrepresented communities are of particular interest.

No preference will be given to any disciplinary or methodological approach. Intrinsic to the research process under this grant program is students visiting a national cemetery or VA grant-funded cemetery of interest more than once.

D. *Applicant Contact Information:* Must not be a toll-free number or P.O. Box address. Must be a working telephone number and physical address for recipient accessibility.

1. Location of the administrative office where correspondence can be sent to the Executive Director/President/Chief Executive Officer/Department Chair (no P.O. Boxes). Include complete address, city, state, zip code plus four-digit extension, county, and Congressional district.

2. *Organization Primary Contact:* Include the name, title, phone number and email address. Note: VLGP views the organization's primary contact as assigned to the organization, not a specific grant application, and should be someone who normally signs grant agreements or makes executive decisions for the organization.

3. *Grant Contact #1:* Include the name, title, phone number and email address. Note: This contact is specific to a grant application under this NOFA and may be a Program Manager, Director, Case Manager, Grant Administrator or other individual of similar position.

V. Application Review Information

A. *Application Review:* Staff reviewers from VA will assess and score all compliant applications. The applications will be ranked from highest to lowest based on application scores as explained below.

B. *Applicant Clarification:* Following the review process, VA may request clarifying information to inform funding recommendations. A request for clarification does not guarantee a grant award. If an organization does not respond by the deadline to a request for clarification, VA will remove its application from consideration.

C. *Application Scoring:* Applications will be evaluated and scored based on the following criteria (100-point scale). An application must receive a total score of at least 70 points (70% of the total available points) to be eligible for a grant. VA may disqualify any application that receives less than 50% of the total available points on one or more of the following criteria.

1. Team—10 possible points.

2. Student research products—15 possible points.

3. Outreach—15 possible points.

4. Instructional materials—15 possible points.

5. Veterans Legacy Memorial (VLM)—20 possible points.

6. Budget—10 possible points.

7. Collection of program assessment data—15 possible points.

In addition to the possible 100-point scale, applications can receive up to an additional 10 points for CPPs as noted in Section I.B. (*Priorities*). The CPP points are separate from, and will not be used to achieve, the threshold 70 points on the application, nor applied to reach the 50% minimum points for any criterion.

D. *Technical Factors:* Applications will be reviewed and evaluated based on the following technical factors to determine the best value for NCA and VLGP:

1. *Team:* The team of contributing scholars must consist of at least one member from an accredited institution of higher education within the area of focus, who is a faculty member who holds an advanced degree in their field and has evidence of demonstrated scholarly output. The team will designate a single point of contact.

2. *Student research products:* Applicants shall define a framework of at least two digital media products produced for educational outreach based on student-generated research. The final products must be publicly accessible examples of applied cemetery research.

3. *Outreach:* Applicants shall define how they plan to develop a framework for digital and non-digital outreach based on student research focused on a VA national cemetery (or cemeteries) or a VA grant-funded State, Territorial or Tribal cemetery (or cemeteries).

4. *Instructional materials:* Applicants shall include the development of at least 5 lesson plans appropriate to the schools, grades and subjects of teachers and K–12 students in the partnership. ''Lesson plan'' includes a plan of instruction that reflects the State's K–12 curriculum standards, *e.g.,* Common Core State Standards, and includes all other resources, materials and aids required for the school-based implementation of the lesson. The lesson plan product can be multiple lessons, structured around pre- and post-cemetery visit learning.

5. *Veterans Legacy Memorial:* Applicants shall teach professional historical research methods which should result in participant-generated biographies which program participants, as appropriate, will upload into NCA's Veterans Legacy Memorial (*www.va.gov/remember*).

6. *Budget:* Applicants should identify all costs and proposed expenditures, to include additional compensation and honoraria (and to whom such payments would be made), in line with the budget categories listed in boxes 6.a. through 6.j. of ''SECTION B—BUDGET CATEGORIES'' on the SF–424A form.

7. *Collection of program assessment data:* Applicants shall design assessment instruments for their students and the K–12 students showing how participation in this program affected students' performance in their subject of inquiry (*e.g.,* history, film, education, American social studies, English Language Arts, art, etc.). Data should be anonymously sampled but demonstrated to be valid and reliable.

E. *Risk Assessment Evaluation:* In addition to the application scoring of technical factors, VA staff (and possibly other Federal agency staff) will evaluate the risks to the program posed by each applicant, including conducting due diligence to ensure an applicant's ability to manage Federal funds. If VA determines to make an award, special conditions that correspond to the degree of risk assessed may be applied to the award. VA reserves the right to conduct multiple risk assessments of recipients throughout the period of performance. Applicants will be notified of an updated risk level and any measures that may be taken to address any heightened level of risk. In evaluating risks, VA may review and consider the following:

- Financial stability;
- Quality of management systems and ability to meet the management standards prescribed in the uniform requirements in 2 CFR part 200;
- Applicant's record in managing previous Federal awards, grants, or procurement awards, including:
  - Timeliness of compliance with applicable reporting requirements;
  - Accuracy of data reported;
  - Validity of performance measure data reported;
  - Conformance to the terms and conditions of previous Federal awards; and
  - If applicable, the extent to which any previously awarded amounts will be expended prior to future awards.
- Information available through Office of Management and Budget (OMB)-designated repositories of Governmentwide eligibility qualification or financial integrity information, such as:
  - Federal Awardee Performance and Integrity Information System;
  - Dun and Bradstreet; and
  - ''Do Not Pay.''

Applicants may review and comment on information available through these OMB-designated repositories, and VA will consider any comments made by the applicant.

- Reports and findings from single audits performed under Subpart F—Audit Requirements, 2 CFR part 200, and findings of any other available audits;
- Applicant organization's annual report;
- Publicly available information, including information from the applicant organization's website;
- Applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on award recipients; and
- Applicant's past compliance with Federal procurement requirements (2 CFR 200.317 through 200.327).

F. *Applicant Priority Groups:* This award cycle places no priority consideration on applicants with any specific focus, discipline, or product.

G. *Disposition of Applications:* Upon review of an application and dependent on availability of funds, VA will:

- Approve the application for funding, in whole or in part, for such amount of funds, and subject to such conditions that VA deems necessary or desirable; or
- Determine that the application is of acceptable quality for funding, in that it meets minimum criteria, but disapprove the application for funding because it did not rank sufficiently high in relation to other applications to qualify for an award based on the level of funding available; or
- Disapprove the application for failure to meet the applicable selection criteria at a sufficiently high level in comparison to other applications to justify an award of funds, or for another reason as provided in the documentation of the decision; or
- Defer action on the application for such reasons as lack of funds or a need for further review.

H. *Withdrawal of Application:* Applicants may withdraw a VLGP application submitted through *www.grants.gov* by submitting a written request to the VA point of contact specified in this notice within 15 days with a rationale for the request.

VI. Award Administration Information

A. *Selection for Funding:* VA will utilize the ranked scores of applications as the primary basis for selection but may factor in the risk assessment and clarifying information provided by the applicant.

B. *Award Notice:* The VLGP Office will announce grant awards after a complete review of all received applications. Awards will be for 12 months. The initial announcement will be made via news release which will be posted on VA's VLGP website at: *https://www.cem.va.gov/legacy/grants.asp.* The VLGP Office will send notification letters to the grant recipients. Applicants who are not selected will be sent a declination letter.

C. *Grant Agreements:* After an applicant is approved for award, VA will draft a grant agreement to be executed by VA and the recipient. Upon execution of the grant agreement, VA will obligate the grant amount. Recipients will be subject to requirements of this NOFA, VLGP regulations (38 CFR 38.710 through 38.785), other Federal grant requirements under 2 CFR part 200 and the recipient's VLGP application.

D. *Administrative and National Policy:* VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor grant programs and outcomes associated with the services provided under VLGP.

E. *Payment:* All recipients must register in the Health and Human Services Payment Management Services (HHS–PMS) Program Support Center at *www.psc.gov.* Funds will be disbursed through HHS–PMS and are to be paid in accordance with 2 CFR 200.305. Recipients will be required to support their request for payment based on the project budget.

F. *Compliance Review:* As needed, VA may conduct site visits to recipient locations to review recipient accomplishments and internal control systems. In addition, VA may conduct as many inspections as needed of recipient records to determine compliance. All visits and evaluations will be performed with minimal disruption to the recipient to the extent practicable.

G. *Reporting:*

1. *Final report:* All recipients must submit all financial, performance, and other reports to the program office as required by the terms and conditions of the Federal award and 2 CFR part 200. However, VLGP may approve extensions when requested and justified by the grant recipients, as applicable. The final report must include: a program evaluation, proof of meeting VA objectives as outlined in VLGP's mission and a summary of the effectiveness of the completed proposal.

2. *Additional reporting:* VA may request additional information, records and reports to allow VA to assess program effectiveness, such as quarterly Federal Financial Reports and Performance Progress Reports.

H. *Recovery of Funds:* VA may recover from the recipient any funds that are not used in accordance with the grant agreement. If VA decides to recover funds, VA will issue to the recipient a notice of intent to recover grant funds, and the recipient will then have 30 days to submit documentation demonstrating why the grant funds should not be recovered. After review of all submitted documentation, VA will determine whether action will be taken to recover the grant funds. When VA decides to recover grant funds from the recipient, VA will stop further payments of grant funds until the grant funds are recovered and the condition that led to the decision to recover grant funds has been resolved.

I. *Financial Management:* The recipient shall conform to the Single Audit Act Amendments of 1996, as implemented by 2 CFR part 200. All recipients must use a financial management system that complies with 2 CFR part 200. Recipients must meet the applicable requirements of OMB's regulations on Cost Principles at 2 CFR part 200.

J. *Availability of Grant Funds:* Federal financial assistance will become available subsequent to the effective date of the grant as set forth in the grant agreement. Recipients may be reimbursed for costs resulting from obligations incurred before the effective date of the grant, if such costs are authorized by VA within this NOFA or the grant agreement or subsequently by VA in writing and otherwise would be allowable as costs of the grant under applicable guidelines, regulations and terms and conditions of the grant agreement.

Signing Authority: Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on February 26, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2024–04357 Filed 2–29–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Agency Information Collection Activity: Application for Dependency and Indemnity Compensation by Parent(s) (Including Accrued Benefits and Death Compensation When Applicable)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 30, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0005'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0005'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 1121 and 38 U.S.C. 5121.

Title: Application for Dependency and Indemnity Compensation by Parent(s) (Including Accrued Benefits and Death Compensation when Applicable).

OMB Control Number: 2900–0005.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21P–535 is primarily used to collect the information necessary to determine a surviving parent's eligibility for Parents' DIC benefits. The information is used to determine eligibility for VA benefits, and, if eligibility exists, the proper rate of payment.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden per Respondent: 1 hour and 12 minutes (1.2 hours).

Frequency of Response: One time.

Estimated Number of Respondents: 1,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–04349 Filed 2–29–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA).

ACTION: Rescindment of a system of records.

SUMMARY: VA is rescinding an outdated system of records titled, ''Compliance Records, Response, and Resolution of Reports of Persons Allegedly Involved in Compliance Violations-VA'' (106VA17). This system of records covered reports of suspected compliance violations and response to such allegations.

DATES: The system was discontinued on September 17, 2023. Comments on this rescinded system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the rescindment will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Compliance Records, Response, and Resolution of Reports of Persons Allegedly Involved in Compliance Violations—VA'' (106VA17). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, VHA Chief Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492 (Note: this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Categories of individuals covered by the system of records were employees, Veterans, third parties such as contractors who conduct official business with the VHA, family members or representatives of Veterans, and subjects of complaints and complainants. Complainants are individuals who have reported a possible violation of law, rules, policies, regulations, or external program requirements, such as third-party payer billing guidelines. Records were maintained in a computerized database, paper files, and electronically in a manner that allowed a user to retrieve the records by an individual's name or other identifier assigned to an individual. The VHA Office of Integrity and Compliance, in conjunction with the VA Office of Information and Technology, modified the computerized database to prohibit the retrieval of electronic records by an individual's name or other unique identifier assigned to an individual.

This system of records notice is being rescinded for use as the computer database now only contains records which are not retrieved by a name or a unique identifier that can be connected

to individuals. The records associated with ''Compliance Records, Response, and Resolution of Reports of Persons Allegedly Involved in Compliance Violations—VA'' will be retained and destroyed in accordance with VHA Records Control Schedule 10–1, item number 1110.5.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on February 26, 2024 for publication.

Dated: February 27, 2024.

Amy L. Rose,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME:

''Compliance Records, Response, and Resolution of Reports of Persons Allegedly Involved in Compliance Violations—VA'' (106VA17)

HISTORY:

74 FR 41490 (August 17, 2009).

[FR Doc. 2024–04339 Filed 2–29–24; 8:45 am]

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FEDERAL REGISTER

Vol. 89 Friday,
No. 42 March 1, 2024

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 922

Proposed Papahānaumokuākea National Marine Sanctuary; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 240213–0047]

RIN 0648–BL33

Proposed Papahānaumokuākea National Marine Sanctuary

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; notification of availability of draft environmental impact statement and draft management plan; request for public comments.

SUMMARY: NOAA proposes to designate marine portions of Papahānaumokuākea Marine National Monument as Papahānaumokuākea National Marine Sanctuary (proposed sanctuary) to protect nationally significant biological, cultural, and historical resources and to manage this special place as part of the National Marine Sanctuary System. The proposed sanctuary consists of an area of approximately 582,570 square statute miles (439,910 square nautical miles) of Pacific Ocean waters surrounding the Northwest Hawaiian Islands and the submerged lands thereunder. NOAA proposes to establish the terms of designation for the proposed sanctuary and proposes regulations to implement the designation of the national marine sanctuary. NOAA is also publishing a draft environmental impact statement (DEIS), prepared in coordination with the State of Hawai'i, and a draft management plan (DMP). NOAA is soliciting public comments on the proposed rule, the DEIS and the DMP.

DATES: NOAA will consider all comments received by May 7, 2024. NOAA will host public meetings and will allow for comments in both English and Hawaiian (ʻŌlelo Hawai'i) at the following dates and times:

Meeting #1: Virtual Meeting—April 6, 2024, 9 a.m.–12 p.m. HST.

Meeting #2: Honolulu, Oʻahu—April 8, 2024, 5 p.m.–8 p.m. HST, Aloha Tower, Multipurpose Room 3, 1 Aloha Tower Drive, Honolulu, Hawai'i 96813.

Meeting #3: Kāneʻohe, Oʻahu—April 9, 2024, 5 p.m.–8 p.m. HST, Heʻeia State Park, 46–465 Kamehameha Hwy., Kāneʻohe, Hawai'i 96744.

Meeting #4: Waiʻanae, Oʻahu—April 10, 2024, 5 p.m.–8 p.m. HST, Waiʻanae District Park Gym, 85–601 Farrington Highway, Waiʻanae, Hawai'i 96792.

Meeting #5: Waimea, Kauaʻi—April 11, 2024, 5 p.m.–8 p.m. HST, Waimea High School—Cafeteria, 9707 Tsuchiya Rd., Waimea, Hawai'i 96796.

Meeting #6: Hanalei, Kauaʻi—April 12, 2024, 5 p.m.–8 p.m. HST, location address to be determined.

Meeting #7: Hilo, Hawai'i—April 15, 2024, 5 p.m.–8 p.m. HST, Mokupāpapa Discovery Center, 76 Kamehameha Ave., Hilo, Hawai'i 96720.

Meeting #8: Kahaluʻu Kona, Hawai'iApril 16, 2024, 5 p.m.–8 p.m. HST, Kahaluʻu Ma Kai Site—Kamehameha Schools, 78–6780 Ali'i Drive, Kailua-Kona, Hawai'i 96740.

Meeting #9: Kahului, Maui—April 17, 2024, 5 p.m.–8 p.m. HST, Maui Community College Dining Room, 310 W Kaʻahumanu Avenue, Kahului, Hawai'i 96732.

Meeting #10: Kaunakakai, Molokaʻi—April 18, 2024, 5 p.m.–8 p.m. HST, location address to be determined.

Please check the website (*https://sanctuaries.noaa.gov/papahanaumokuakea/*) for the most up-to-date information on public meetings, including meeting locations and the virtual meeting link. NOAA may end a virtual or in-person meeting before the time noted above if all participants have concluded their oral comments.

ADDRESSES: You may submit comments on this document, identified by NOAA–NOS–2021–0114, by any of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and search for docket NOAA–NOS–2021–0114 (*note:* copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send any hard copy public comments by mail to PMNM-Sanctuary Designation, NOAA/ONMS, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.
- *Public Meetings:* Provide oral comments during public meetings, as described under **DATES**. Details and additional information about how to participate in these public meetings is available at *https://sanctuaries.noaa.gov/papahanaumokuakea/.*

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields to remain anonymous).

Copies of the proposed rule, the DEIS, DMP, maps of the proposed boundaries, and additional background materials can be downloaded or viewed at *www.regulations.gov* (search for docket #NOAA–NOS–2021–0114). Copies will also be available at *https://sanctuaries.noaa.gov/papahanaumokuakea/.*

FOR FURTHER INFORMATION CONTACT: Eric Roberts, Papahānaumokuākea Marine National Monument Superintendent, at *Eric.Roberts@noaa.gov* or 808–294–7470.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary) to designate and protect as national marine sanctuaries areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or aesthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to NOAA. The primary objective of the NMSA is to protect the resources of the National Marine Sanctuary System.

NOAA proposes to designate marine portions of the Papahānaumokuākea Marine National Monument as a national marine sanctuary to provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources. The original Papahānaumokuākea Marine National Monument (PMNM, 0–50 nm), and the Monument Expansion Area (MEA, 50–200 nm), (collectively ''Monument''), located around the Northwestern Hawaiian Islands, were established under the Antiquities Act of 1906 (54 U.S.C. 320301 *et seq.*) through, respectively, Presidential Proclamation 8031 of June 15, 2006; as amended by Presidential Proclamation 8112 of February 28, 2007; and Presidential Proclamation 9478 of August 26, 2016. The Monument is administered jointly by four Co-Trustees—the Department of Commerce, the Department of the

Interior, the State of Hawai'i, and the Office of Hawaiian Affairs.

In 2006, former President Bush established PMNM to protect and preserve the marine area of the Northwestern Hawaiian Islands and certain lands as necessary for the care and management of the historic and scientific objects therein. The Federal land and interests in land reserved included approximately 139,793 square miles of emergent and submerged lands and waters of the Northwestern Hawaiian Islands. NOAA and the United States Fish and Wildlife Service (USFWS) promulgated implementing regulations at 50 CFR part 404 for PMNM.

In 2016, Presidential Proclamation 9478 expanded the Monument into an adjacent area—the MEA—which includes the waters and submerged lands to the extent of the seaward limit of the United States Exclusive Economic Zone (U.S. EEZ) west of 163° West Longitude and covers an additional 442,781 square miles. Presidential Proclamation 9478 also directed the Secretary of Commerce to consider initiating the process to designate the MEA and PMNM seaward of the Hawaiian Islands National Wildlife Refuge and Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial as a national marine sanctuary to supplement and complement existing authorities. On December 27, 2020, the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2021, directed NOAA to initiate the process to designate the Monument as a national marine sanctuary.

The proposed sanctuary consists of a total area of approximately 582,570 square miles (439,910 square nautical miles). The precise boundary coordinates are defined in appendix A to the regulations at 15 CFR part 922, subpart W. The proposed sanctuary boundary encompasses the submerged lands, seamounts, and Pacific Ocean waters from the shoreline seaward to approximately 200 nautical miles west of 163° West Longitude surrounding the Northwest Hawaiian Islands which consist of the islands, atolls, and emergent lands stretching from Nihoa in the southeast to Kure Atoll in the northwest. The adjoining marine waters east of 163° West Longitude surrounding Nihoa extend seaward from the shoreline to approximately 50 nautical miles. This boundary reflects NOAA's preferred alternative, which is described in the DEIS as Alternative 1.

The proposed sanctuary is a place of unique environmental resources that provide large-scale ecosystem services for both the region and the world. The marine habitat includes several interconnected ecosystems, including coral islands surrounded by shallow reef, deeper reef habitat characterized by seamounts, banks, and shoals, mesophotic reefs with extensive algal beds, pelagic waters connected to the greater North Pacific Ocean, and deep-water habitats such as abyssal plains 5,000 meters below sea level. These ecosystems are connected as essential habitats for rare species such as the threatened green turtle and the critically endangered Hawaiian monk seal, as well as over 14 million seabirds that forage in the pelagic waters to nourish the chicks they are raising on the tiny islets. These waters are home to 20 cetacean species protected by the Marine Mammal Protection Act (MMPA), with some listed as endangered under the Endangered Species Act (ESA). The importance of these waters to the Hawaiian humpback whale is only recently becoming understood. At least a quarter of the nearly 7,000 known marine species found in the region are found nowhere else on Earth.

The area of the proposed sanctuary is also a sacred place to Native Hawaiians, who regard the islands and wildlife as kūpuna, or ancestors. The region holds deep cosmological and traditional significance for living Native Hawaiian culture. Papahānaumokuākea is as much a spiritual as well as a physical geography, deeply rooted in Native Hawaiian creation and settlement stories. Since Native Hawaiian culture considers nature and culture to be one and the same, the protection of one of the last nearly pristine, natural, marine ecosystems in the archipelago is seen as being akin to preserving the living culture.

The area of the proposed sanctuary also includes the location of the Battle of Midway, a turning point in World War II for the allies in the Pacific Theater. Research indicates that there are 60–80 military vessels and hundreds of aircraft on the seafloor. In addition to Navy steamers and aircraft, there are whaling ships, Japanese junks, Hawaiian fishing sampans, Pacific colliers, and other vessels from the 19th and 20th centuries. Of these, the locations of more than 30 vessel wreck sites have been confirmed by diving or bathymetric surveys, with only a handful of those identified by vessel name or otherwise evaluated.

B. Purpose and Need for Action

The National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*) authorizes the Secretary to designate national marine sanctuaries to meet the purposes and policies of the NMSA, including:

- ''to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities'' (16 U.S.C. 1431(b)(2));
- ''to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes'' (16 U.S.C. 1431(b)(3));
- ''to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archaeological resources of the National Marine Sanctuary System'' (16 U.S.C. 1431(b)(4));
- ''to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas'' (16 U.S.C. 1431(b)(5));
- ''to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities'' (16 U.S.C. 1431(b)(6));

NOAA's proposed action is to designate marine areas of Papahānaumokuākea as a national marine sanctuary. The purpose of this action is to provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources. Additionally, the purpose of the designation is to implement the provisions of Executive Order 13178, Presidential Proclamation 9478, and the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2021.

Accordingly, NOAA is proposing to designate this area as a national marine sanctuary to:

- Develop objectives and actions that ensure lasting protection consistent with the existing Monument proclamations;
- Safeguard natural and cultural values of the marine environment;
- Apply additional regulatory and non-regulatory tools to augment and strengthen existing protections for Papahānaumokuākea ecosystems, wildlife, and cultural and maritime heritage resources;
- Authorize NOAA to assess civil penalties for violations of provisions of the NMSA and regulations and permits

issued pursuant to the NMSA (16 U.S.C. 1437(d));

- Impose liability for destruction, loss of, or injury to sanctuary resources and provide natural resource damage assessment authorities for destruction, loss of, or injury to any sanctuary resource (16 U.S.C. 1443); and
- Require interagency consultation for any Federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource (16 U.S.C. 1434(d));

C. Designation Process

1. Notice of Intent To Designate a National Marine Sanctuary

On November 19, 2021, NOAA initiated the process to designate marine portions of the Monument as a national marine sanctuary by publishing a Notice of Intent to Conduct Scoping and to Prepare an Environmental Impact Statement for the Proposed Designation of a National Marine Sanctuary within Papahānaumokuākea Marine National Monument (86 FR 64904). The notice of intent stated that NOAA would prepare a DEIS per the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the NMSA. The notice of intent (NOI) also announced NOAA's intent to fulfill its responsibilities under the National Historic Preservation Act (NHPA; 54 U.S.C. 300101 *et seq.*). The State of Hawai'i published its EIS preparation notice on December 8, 2021. Following publication of these notices, NOAA conducted four virtual public scoping meetings. During the 74-day public comment period from November 19, 2021 through January 31, 2022, 73 individuals and organizations provided written input. An estimated 165 people attended the four scoping meetings, with 9 people providing oral comments. The Summary of Scoping Input on the Notice of Intent and EIS Preparation Notice and State of Hawai'i Responses to Public Scoping Comments are included in the DEIS as appendix G.

2. Development of Proposed Terms of Designation and Proposed Regulations

Section 304(a)(4) of the NMSA requires that the terms of designation include: (1) the geographic area that is proposed to be included within the sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and (3) the types of activities that would be subject to regulation by the Secretary to protect these characteristics. Section 304(a)(4) of the NMSA also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made.

The purpose and need for the sanctuary provide the overarching basis for developing the proposed regulations. The designation of the proposed sanctuary would not replace the area's current status as a marine national monument. The proposed rule would supplement the existing provisions for management of the Monument and further protect resources in the Northwest Hawaiian Islands. To draft these regulations, NOAA reviewed the following, which currently guide Monument management:

- Executive Order 13178—Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, December 4, 2000;
- Presidential Proclamation 8031—Establishment of the Northwestern Hawaiian Islands Marine National Monument, June 15, 2006;
- Presidential Proclamation 8112, Amending Proclamation 8031 of June 15, 2006 to Read ''Establishment of the Papahānaumokuākea Marine National Monument,'' February 29, 2007;
- Regulations implementing Presidential Proclamations 8031 and 8112 at 50 CFR part 404; and
- Presidential Proclamation 9478—Papahānaumokuākea Marine National Monument Expansion, August 26, 2016.

These executive orders, presidential proclamations, and regulations served as benchmarks for drafting the proposed rule for the proposed sanctuary. The proposed rule would only add to, and would not diminish, Monument management measures and protections. NOAA has adopted the management measures from these benchmarks, and, in a few areas, added onto those measures to allow for consistency in regulation and management across the proposed sanctuary. The proposed rule unifies management of the area by removing discrepancies and gaps in prohibitions, regulated activities, and permit criteria, providing clarity and comprehensive protection for the proposed sanctuary.

In developing this proposed rule and the proposed sanctuary terms of designation, NOAA also considered: (1) information received through public scoping comments, cooperating agency review, and coordination with the Monument Co-Trustees through the seven-member Monument Management Board (MMB), which consists of NOAA ONMS, NOAA National Marine Fisheries Service, USFWS Ecological Services, USFWS Refuges, Hawai'i Department of Land and Natural Resources (DLNR) Division of Aquatic Resources, DLNR-Division of Forestry and Wildlife, and the Office of Hawaiian Affairs (OHA); and (2) information from analysis of issues in the DEIS, interagency coordination, and internal staff analysis and expertise. NOAA also consulted with the Western Pacific Regional Fishery Management Council as required under the NMSA.

A detailed discussion of the proposed rule is contained below in section III, subsections A through M. The proposed terms of designation are contained below in section II, and are incorporated as an annex to the DMP.

3. Development of Draft Management Plan

A DMP has been prepared in accordance with NMSA section 304(a)(2)(C). Management plans are site-specific documents that ONMS uses to manage individual sanctuaries. The DMP: (1) articulates the sanctuary's vision, mission, goals, and objectives; (2) describes the management activities and initiatives that NOAA proposes to conduct; and (3) provides strategies and assessment measures to guide the sanctuary's short and mid-range management. The DMP for the sanctuary is included as appendix A to the DEIS.

4. Draft Environmental Impact Statement

In accordance with National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the NMSA, and the Hawai'i Environmental Policy Act (HEPA, Chapter 343 HRS, HAR Chapter 11–200.1), NOAA is releasing a DEIS for the proposed national marine sanctuary designation in conjunction with the publication of this proposed rule. NOAA is the lead Federal agency in the preparation of the environmental impact statement. The USFWS, State of Hawai'i, and the Department of the Navy are cooperating agencies for the NEPA process. The DEIS (*https://sanctuaries.noaa.gov/papahanaumokuakea/*) describes the purpose and need for the proposed action of designating a national marine sanctuary, identifies a range of alternatives including the preferred alternative, provides an assessment of resources and uses in the area, and evaluates the potential environmental consequences of the proposed designation including by comparing the beneficial and adverse impacts among alternatives.

The DEIS analyzes four alternatives; including a ''no action'' alternative, in which the area would not be designated as a national marine sanctuary; and three boundary alternatives:

• Alternative 1 is coextensive with the marine portions of the Monument. The boundary includes the marine environment surrounding the Northwestern Hawaiian Islands from the shoreline of the islands and atolls seaward to 200 nautical miles, including all State waters and waters of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, and State of Hawai'i Northwestern Hawaiian Islands Marine Refuge. The area encompassed in Alternative 1 is approximately 582,570 square miles (439,910 square nautical miles).

• Alternative 2 includes the marine environment from the shoreline of the islands and atolls seaward to 50 nautical miles. This alternative includes all State waters and waters of the Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, and State of Hawai'i Northwestern Hawaiian Islands Marine Refuge. This alternative does not include the MEA. The area encompassed in Alternative 2 is approximately 139,782 square miles (105,552 square nautical miles).

• Alternative 3 has the same boundaries as Alternative 1, excluding waters within the Midway Atoll and Hawaiian Islands National Wildlife Refuges. The area encompassed in Alternative 3 is approximately 581,263 square miles (438,923 square nautical miles).

5. Agency-Preferred Alternative

NOAA is identifying Alternative 1 as the agency-preferred alternative (preferred alternative) based on its comparative merits; this alternative serves as the foundation of this proposed rule (section 3.3 of the DEIS presents a map and an additional explanation of the reasons for this selection). NOAA selected its preferred alternative after considering input from the Monument Management Board, the State of Hawai'i, cooperating agencies, and public scoping meetings. Through the analysis in the DEIS, NOAA has found that the preferred alternative would provide numerous beneficial impacts, including increased protection and conservation of resources, and improved coordination of conservation and management. NOAA has also considered the potential adverse impacts of the preferred alternative and anticipates that there would be no significant adverse impacts to biological and physical resources, cultural and historic resources, or socioeconomic resources.

NOAA's identification of Alternative 1 as the preferred alternative is based on the need for additional resource protection, scientific research, and public education in areas that would be excluded by selecting the boundaries of Alternatives 2 or 3. Alternative 1 includes the MEA, an area which would benefit from the establishment of a NOAA permitting process, and the promulgation of sanctuary regulations to protect resources. Alternative 1 also includes the waters of Midway Atoll and Hawaiian Islands National Wildlife Refuges National Wildlife Refuges, which are the areas of the proposed sanctuary subject to the highest level of human activity.

Based on the public comments NOAA receives on the draft designation documents and NOAA's experience administering the national marine sanctuary program, pursuant to NEPA and the Administrative Procedure Act, NOAA may choose to select a different alternative in the final rule and final EIS that is within the geographic and regulatory scope of the alternatives currently considered in the DEIS, and that is a logical outgrowth of this proposed rule.

II. Proposed Sanctuary Terms of Designation

Section 304(a)(4) of the NMSA as amended, 16 U.S.C. 1434(a)(4), requires that the terms of designation be described at the time a sanctuary is designated, including: (1) the geographic area proposed to be included within the sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and (3) the types of activities that will be subject to regulation by the Secretary of Commerce to protect these characteristics. The following represents the proposed terms of designation:

Under the authority of the National Marine Sanctuaries Act, as amended (the ''Act'' or ''NMSA''), 16 U.S.C. 1431 *et seq.,* approximately 439,910 square nmi (582,570 square mi) of the waters of the Pacific Ocean surrounding the Northwestern Hawaiian Islands are hereby designated as a National Marine Sanctuary for the purpose of providing long-term protection and management of the ecological, cultural, and historical resources and the conservation, recreational, scientific, educational, and aesthetic qualities of the area.

Article I: Effect of Designation

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the ecological, cultural, and historical resources and the conservation, recreational, scientific, educational, and aesthetic qualities of Papahānaumokuākea National Marine Sanctuary (the ''Sanctuary''). Section 1 of Article IV of these terms of designation lists those activities that may be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing an activity does not necessarily mean that it will be regulated. However, if an activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended by the same procedures by which the original Sanctuary designation was made.

Article II: Description of the Area

The sanctuary encompasses the submerged lands, seamounts, and Pacific Ocean waters from the shoreline seaward to approximately 200 nautical miles west of 163° West Longitude surrounding the Northwestern Hawaiian Islands which consist of the islands, atolls, and emergent lands stretching from Nihoa in the southeast to Hōlanikū (Kure Atoll) in the northwest. The marine waters east of 163° West Longitude surrounding Nihoa extend seaward from the shoreline to approximately 50 nautical miles. The total area of the sanctuary comprises approximately 582,570 square miles (439,910 square nautical miles). The precise boundary coordinates are defined in appendix A to the regulations at 15 CFR part 922, subpart W.

Article III: Special Characteristics of the Area

Papahānaumokuākea is a place of special national significance that provides large-scale ecosystem services for the region and the world. The marine habitat includes several interconnected ecosystems, including coral islands surrounded by shallow reef, deeper reef habitat characterized by seamounts, banks, and shoals scattered across the area of the sanctuary, mesophotic reefs with extensive algal beds, pelagic waters connected to the greater North Pacific Ocean, and deep-water habitats and abyssal plains 5,000 meters below sea level. These connected ecosystems provide essential habitats for rare species such as the threatened green sea turtle and the critically endangered Hawaiian monk seal, as well as habitat for more than 14 million seabirds that forage in the pelagic waters to nourish the chicks they are raising on the tiny islets. Papahānaumokuākea is home to 20 cetacean species, protected by the MMPA, with some listed as endangered under the ESA. At least a

quarter of the nearly 7,000 known marine species found in the region are found nowhere else on Earth.

The area of the proposed sanctuary is also a place of historic and cultural significance. The area of the proposed sanctuary includes the location of the Battle of Midway, a turning point in World War II for the allies in the Pacific Theater. Research indicates that 60–80 military vessels and hundreds of aircraft are scattered across the seafloor. In addition to Navy steamers and aircraft, there are whaling ships, Japanese junks, Hawaiian fishing sampans, Pacific colliers, and other vessels from the 19th and 20th centuries.

Papahānaumokuākea is also a sacred place to Native Hawaiians, who regard the islands and wildlife as kūpuna, or ancestors. The region holds deep cosmological and traditional significance to living Native Hawaiian culture and contains a host of intact and significant archaeological sites found on the islands of Nihoa and Mokumanamana, both of which are on the National Register of Historic Places and Hawai'i Register of Historic Places. Papahānaumokuākea is as much a spiritual as a physical geography, rooted deep in Native Hawaiian creation and settlement stories.

Article IV: Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, as may be necessary to ensure the protection and effective management of the ecological, cultural, historical, conservation, recreational, scientific, educational, or aesthetic resources or qualities of the area:

1. Access to the sanctuary;
2. Ship reporting;
3. Vessel monitoring;
4. Vessel discharge;
5. Exploring for, developing, or producing oil, gas, or minerals, or any energy development activities;
6. Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a sanctuary resource;
7. Introducing or otherwise releasing an introduced species from within or into the sanctuary;
8. Deserting a vessel;
9. Commercial fishing;
10. Non-commercial fishing;
11. Possessing fishing gear;
12. Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope;
13. Drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;
14. Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving sanctuary resource;
15. Attracting any living sanctuary resource;
16. Touching coral, living or dead;
17. Swimming, snorkeling, or closed or open circuit SCUBA diving; or
18. Discharging or depositing any material or other matter, or discharging or depositing any material or other matter outside of the sanctuary that subsequently enters the sanctuary and injures or has the potential to injure any resources of the sanctuary;
19. Anchoring a vessel;
20. Native Hawaiian practices;
21. Research and scientific exploration;
22. Scientific research and development by Federal agencies;
23. Activities that will further the educational value of the sanctuary or will assist in the conservation and management of the sanctuary; and
24. Recreational activities.

Listing an activity here means that the Secretary of Commerce can regulate the activity, after complying with all applicable laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA. No term of designation issued under the authority of the NMSA may take effect in Hawaii State waters within the Sanctuary if the Governor of Hawaii certifies to the Secretary of Commerce that such term of designation is unacceptable within the review period specified in the NMSA.

Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities, including those not listed in section 1, are subject to immediate temporary regulation, including prohibition.

Article V: Alteration of This Designation

The terms of designation, as defined under section 304(a)(4) of the NMSA, may be modified only by the same procedures by which the original designation is made, including public hearings, consultations with interested Federal, Tribal, State, regional, and local authorities and agencies, review by the appropriate Congressional committees, and approval by the Secretary of Commerce, or his or her designee.

III. Summary of Proposed Regulations

A. Adding New Subpart W

NOAA is proposing to amend 15 CFR part 922 by adding a new subpart (subpart W) that contains site-specific regulations for the proposed sanctuary. This subpart would include the proposed boundary, contain definitions of common terms used in the new subpart, identify prohibited activities and exceptions, and establish procedures for permitting otherwise prohibited activities.

B. Proposed Sanctuary Boundary

NOAA proposes to designate the marine environment surrounding the Northwestern Hawaiian Islands from the shoreline of the islands and atolls seaward to 200 nautical miles, including all waters of the Monument. NOAA estimates the area encompassed in the proposed designation is approximately 582,570 square miles (439,910 square nautical miles).

C. Definitions

This proposed rule incorporates and adopts common terms defined in the national regulations at 15 CFR 922.11. In addition, NOAA proposes to include 19 site-specific definitions. To the extent that a term appears in § 922.11 and the definitions section of the proposed rule, the definition in the proposed rule would govern.

- The definitions for ''Bottomfish Species'' and ''Pelagic Species'' are adopted from regulations for Fisheries in the Western Pacific, 50 CFR 665.201 and 50 CFR 665.800.
- ''Ecological integrity'', ''Midway Atoll Special Management Area'', ''Native Hawaiian practices'', ''Pono'', ''Recreational activity'', ''Special Preservation Area (SPA)'', ''Stowed and not available for immediate use'', ''Sustenance fishing'', and ''Vessel monitoring system or VMS'', are adopted from Presidential Proclamation 8031.
- ''Commercial fishing'' and ''Non-commercial fishing'' are adopted from the MSA and, in part, from regulations for Fisheries in the Western Pacific, 50 CFR 665.12.
- ''Particularly Sensitive Sea Area (PSSA)'' is adopted from IMO Resolution A.982(24), December 1, 2005.
- ''Areas to be avoided (ATBA)'' and ''Office of Law Enforcement'' are adopted from Papahānaumokuākea Marine National Monument regulations, 50 CFR 404.3.
- ''Outer Sanctuary Zone (OSZ)'' refers to the area of the sanctuary that would extend from approximately 50

nautical miles from all the islands and emergent lands of the Northwestern Hawaiian Islands to the extent of the seaward limit of the United States Exclusive Economic Zone west of 163° West Longitude. This area of the proposed sanctuary would correspond with the area designated as a marine national monument by Presidential Proclamation 9478, referred to as the ''Papahānaumokuākea Marine National Monument Expansion'' or MEA. NOAA is proposing this definition to provide clarity to the public where there is a regulation that only applies to this area of the sanctuary, and not the entire sanctuary. The name ''OSZ'' is a placeholder, and NOAA is soliciting public comment on possible names for this area of the proposed sanctuary.

• ''Reporting Area'' refers to the area of the proposed sanctuary that extends outward ten nautical miles from the PSSA boundary, as designated by the IMO, and excludes the ATBAs that fall within the PSSA boundary. The reporting area is defined by the coordinates set forth in appendix E to the proposed rule. NOAA is proposing to define the ''reporting area'' to clarify in which areas of the proposed sanctuary ship reporting requirements apply.

• ''Scientific instrument'' is a term used in Presidential Proclamation 9478, but the term was not defined. Specifically, Presidential Proclamation 9478 prohibits ''drilling into, dredging, or otherwise altering the submerged lands, or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands, except for scientific instruments''. NOAA proposes to define ''scientific instrument'' to clarify what may or may not be permitted. NOAA proposes to define ''scientific instrument'' to mean ''a device, vehicle, or tool used for scientific purposes and is inclusive of structures, materials, or other matter incidental to proper use of such device, vehicle, or tool.'' In defining ''scientific instruments,'' NOAA's definition provides for the inclusion of ''structures, materials, or other matter incidental to proper use of such device, vehicle, or tool'' because, based on the type of activities previously permitted in the Monument, proper deployment and use of most scientific instruments requires more than the instrument itself. For example, there may be incidental ballast discharge associated with the use of a scientific instrument like a remotely operated vehicle, or ROV. A narrower definition of ''scientific instruments'' could unduly restrict NOAA's ability to permit activities in the area of the proposed sanctuary that overlaps with the MEA, the OSZ. NOAA believes a narrower definition would be inconsistent with the intent of Presidential Proclamation 9478, which states ''Undisturbed seamount communities in the adjacent area are of significant scientific interest because they provide opportunities to examine the impacts of physical, biological, and geological processes on ecosystem diversity, including understanding the impacts of climate change on these deep-sea communities. These seamounts and ridges also provide the opportunity for identification and discovery of many species not yet known to humans, with possible implications for research, medicine, and other important uses. Recent scientific research, utilizing new technology, has shown that many species identified as objects in Proclamation 8031 inhabit previously unknown geographical ranges that span beyond the existing Monument, and in some cases the adjacent area also provides important foraging habitat for these species.'' These statements clearly demonstrate the significant scientific value of the MEA and underscore the opportunities for research and discovery to occur in that area of the proposed sanctuary.

D. Co-Management of the Sanctuary

To enhance opportunities and build on existing protections, NOAA and the State of Hawai'i would collaboratively manage the sanctuary. NOAA would establish the framework for co-management in section 922.242 of the proposed rule and may develop a Memorandum of Agreement (MOA) with the State of Hawai'i to provide greater details of the terms of co-management. NOAA and the State may develop additional agreements as necessary to provide details on the execution of sanctuary management, such as activities, programs, and permitting that can be updated to adapt to changing conditions or threats to the sanctuary resources. Any proposed changes to sanctuary regulations or boundaries would be coordinated with the State and subject to public review as mandated by the NMSA and other Federal statutes. Co-management of the proposed sanctuary with the State of Hawaii would not supplant the existing co-management structure for the Monument.

E. Access

In PMNM, pursuant to Presidential Proclamation 8031, access is prohibited except under the following circumstances: (1) for emergency response and law enforcement purposes; (2) for activities and exercises of the Armed Forces; (3) for persons who have been issued Monument permits; and (4) for passage without interruption. For consistency, and to protect sanctuary resources, NOAA proposes extending the access restrictions which apply to the area of the proposed sanctuary that overlaps the PMNM to the area of the proposed sanctuary that overlaps with the MEA as follows:

Access to the sanctuary would be prohibited and thus unlawful except under the following circumstances: (1) for emergency response actions, law enforcement activities, and activities and exercises of the Armed Forces; (2) pursuant to a sanctuary permit; (3) when conducting non-commercial fishing activities in the OSZ authorized under the Magnuson-Stevens Fishery Conservation and Management Act provided that no sale of harvested fish occurs; and (4) when passing through the sanctuary without interruption.

A vessel may pass without interruption through the sanctuary without requiring a permit as long as the vessel does not stop, anchor or engage in prohibited activities within the sanctuary, and vessel discharges are limited to the following:

• Vessel engine cooling water, weather deck runoff, and vessel engine exhaust within a Special Preservation Areas or the Midway Atoll Special Management Area; and

• Discharge incidental to vessel operations such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust in areas other than Special Preservation Areas or the Midway Atoll Special Management Area.

A vessel passing through the sanctuary without interruption may be subject to the ship reporting system, as described below.

The proposed access restrictions would be applied in accordance with generally recognized principles of international law, in accordance with sections 305(a) and 307(k) of the NMSA and the NMSA's Regulations of General Applicability at 15 CFR 922.1(b). No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States vessels unless in accordance with generally recognized principles of international law.

F. Ship Reporting

NOAA also proposes regulations to implement the ship reporting system (CORAL SHIPREP) adopted by the International Maritime Organization (IMO), which would require entrance and exit notifications for vessels that

pass without interruption through the sanctuary areas contained within a reporting area. NOAA proposes to establish this reporting area, which would be defined as ''the area of the proposed sanctuary that extends outward ten nautical miles from the PSSA [Particularly Sensitive Sea Area] boundary, as designated by the IMO, and excludes the ATBAs [Areas to be avoided] that fall within the PSSA boundary.'' The reporting area would be further defined by the coordinates set forth in appendix E to the proposed rule. Appendix E includes a coordinates table for the ''Reporting Area Outer Boundary,'' which contains the reporting area's boundary surrounding the PSSA. Appendix E also includes coordinate tables for the ''Inner Reporting Area Boundary'' for each of the four ATBAs that fall within the PSSA, but which are not part of the reporting area.

NOAA proposes exemptions for emergency response and law enforcement purposes, and for activities and exercises of the Armed Forces. Therefore, CORAL SHIPREP's requirements would not apply to vessels covered by those exemptions. The proposed regulations do not apply to vessels conducting activities pursuant to a sanctuary permit or vessels conducting non-commercial fishing activities in the OSZ authorized under the Magnuson-Stevens Fishery Conservation and Management Act. The proposed regulations also do not apply to sovereign immune vessels. This is consistent with sections 305(a) and 307(k) of the NMSA, and the NMSA's Regulations of General Applicability at 15 CFR 922.1(b), which state that sanctuary regulations shall be applied in accordance with generally recognized principles of international law. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States vessels unless in accordance with generally recognized principles of international law.

Requiring vessels to notify NOAA immediately upon entering the reporting area, will help make the operators of these vessels aware that they are traveling through a fragile area with potential navigational hazards such as the extensive coral reefs found in many shallow areas of the proposed sanctuary contained within the reporting area. The reporting area for the proposed sanctuary would not include the four voluntary ATBAs adopted by the IMO that are also within the PSSA. An ATBA is an area within which either navigation is particularly hazardous or it is exceptionally important to avoid casualties. While ATBAs can be mandatory (*i.e.,* vessels are required by applicable law to avoid and operate outside of the area) most are voluntary and vessels may travel through them. Because the four ATBAs in the PSSA are voluntary, as adopted by the IMO and implemented by these proposed regulations, the ATBAs are outside of the reporting area. Nonetheless, by virtue of entering or exiting an ATBA, vessels would also be departing or entering the reporting area, and, therefore be subject to the reporting area's requirements four times: (1) once when it enters the reporting area; (2) once when it leaves the reporting area to enter the ATBA; (3) once when it exits the ATBA and enters the reporting area on the other side of the ATBA; and (4) once when it once again leaves the reporting area. The potential burden of reporting four times is justified by the navigational hazards that exist within the ATBAs. The reporting area also includes three large areas within the PSSA that are not within the ATBAs. These breaks between the four ATBAs allow for north-south passages through the sanctuary areas contained within the reporting area that can be utilized for navigation to avoid ATBAs. Vessels passing through the sanctuary in these areas would only send email notification twice: once upon entering the reporting area, and again upon leaving the reporting area.

NOAA is proposing to implement CORAL SHIPREP's requirements under the NMSA in keeping with the United States' and IMO's long-standing interest in providing additional protection to the natural, cultural, and historic resources in PMNM through ship reporting requirements. In June 2006, Presidential Proclamation 8031 directed the Secretary of Commerce and Secretary of Interior to require notification from any person passing through PMNM without interruption at least 72 hours, but no longer than 1 month, prior to the entry date, and within 12 hours of departure. Presidential Proclamation 8031 further indicated the specific types of information that must be provided in the notification. These notification requirements were subsequently codified in 50 CFR 404.4. Presidential Proclamation 8031 also directed the Secretary of State, in consultation with the Secretary of Commerce and Secretary of Interior, to seek the cooperation of other governments and international organizations in furtherance of the purposes of the proclamation and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.

In accordance with Proclamation 8031, in April 2007, the United States proposed to the IMO that PMNM be designated as a PSSA to protect the attributes of the fragile and integrated coral reef ecosystem from potential hazards associated with international shipping activities. The U.S. noted in its proposal that the proposed PSSA and its associated protective measures would result in a minimal burden to international shipping, would significantly further increase maritime safety, protection of the fragile environment, preservation of cultural resources and areas of cultural importance significant to Native Hawaiians, and would facilitate responses to developing maritime emergencies. On April 3, 2008, the IMO designated the PMNM as a PSSA. As part of the PSSA designation process, the IMO adopted U.S. proposals for associated protective measures consisting of expanding and consolidating the six existing recommendatory ATBAs in the PMNM into four larger areas and enlarging the class of vessels to which they apply and establishing a ship reporting area and system for vessels transiting the PMNM, which is mandatory for ships 300 gross tons or greater that are entering or departing a U.S. port or place and recommended for other ships. The system requires that ships notify the U.S. shore-based authority (*i.e.,* the U.S. Coast Guard; NOAA will be receiving all messages associated with this program on behalf of the Coast Guard) at the time they begin transiting the reporting area and again when they exit. In December 2008, NOAA and the USFWS published final regulations to establish a ship reporting system for PMNM, that implemented measures adopted by the IMO requiring notification by ships passing through PMNM without interruption (73 FR 73592). These regulations modified the previous notification requirements at 50 CFR 404.4.

NOAA is proposing to implement the ship reporting system as adopted by the IMO and to establish the reporting area using the boundary coordinates in appendix E to the proposed rule to provide additional protection to the natural, cultural, and historic resources in the proposed sanctuary. Accordingly, NOAA's proposed regulations build upon the requirements outlined in Presidential Proclamation 8031, and reflect additions made through the IMO's adoption of a ship reporting system and the implementation of that system in 50 CFR 404.4. NOAA

proposes minor language changes from the process adopted by IMO Resolution MEPC.171(57) and IMO Resolution MSC.279(85) to provide clarity to the public on which vessels are required to participate in ship reporting and the type of information that should be reported. NOAA proposes one substantive addition to the types of reporting information in the IMO Resolutions, that vessels report ''[a]ny pollution incident or goods lost overboard within the PSSA, the reporting area, or the U.S. EEZ.'' This addition was included in the December 2008 final regulations to establish a ship reporting system for PMNM.

The NMSA provides NOAA with the authority to designate a national marine sanctuary and promulgate regulations implementing the designation if NOAA determines, among other things, that the area is of special national significance (see 16 U.S.C. 1433(a)(2)). NOAA's determination of special national significance is to be based on (1) the area's conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or aesthetic qualities; (2) the communities of living marine resources it harbors; or (3) its resource or human-use values. In designating PMNM as a PSSA, the IMO expressly recognized the ecological, socio-economic, and scientific attributes of the area—including, a ''unique, fragile, and pristine coral reef ecosystem'' and ''significant cultural and archaeological resources''—and their vulnerability to international shipping activities (see IMO Resolution MEPC.171(57)). The IMO highlighted PMNM's (1) more than 7,000 species of fish, mammals, plants, coral, and other invertebrates; (2) critical habitat, spawning, and breeding grounds; (3) cultural significance to Native Hawaiians, rich underwater cultural heritage from the World War II Battle of Midway; and (4) unparalleled opportunities in scientific research. Given the IMO's findings in designating the PSSA and adopting a ship reporting system as an associated protective measure, NOAA's proposed regulations implementing CORAL SHIPREP are necessary and reasonable to conserve and manage this area of special national and international significance as part of the proposed sanctuary (see 16 U.S.C. 1434(a)(1)(A)).

G. Activities That Are Prohibited or Otherwise Regulated

NOAA is proposing to supplement and complement existing management of this area by proposing prohibited or otherwise regulated activities in section 922.244. Presidential Proclamations 8031, 8112, and 9478, and regulations implementing Presidential Proclamations 8031 and 8112 at 50 CFR part 404 provide the foundation for the proposed prohibitions. However, minor changes are made in the proposed rule to remove discrepancies and gaps in prohibitions and regulated activities between PMNM and the MEA in order to allow for consistency in management across the proposed sanctuary.

Within PMNM, the proposed prohibitions are all currently in place through 50 CFR part 404 except for prohibitions 1 and 4 (detailed below). Minor changes are proposed to prohibitions 1 and 4 to remove discrepancies across the two zones (PMNM and MEA). Regulations implementing Presidential Proclamation 9478 have not yet been promulgated for the MEA. Many of the prohibitions adopted in the proposed rule are identified in Presidential Proclamation 9478, which established the MEA. Any prohibitions proposed for the area of the proposed sanctuary that overlaps with the MEA that are not adopted directly from Presidential Proclamation 9478 are identified below.

1. Prohibition on Exploring for, Developing, or Producing Oil, Gas, or Minerals, or Any Energy Development Activities

Consistent with the presidential proclamations establishing the Monument, NOAA is proposing to prohibit exploring for, developing, or producing oil, gas, or minerals to protect sanctuary resources and create a seamless management area throughout the proposed sanctuary. The addition of the prohibition on 'any energy development activities' would be new for PMNM, and was added to further the underlying intent of the prohibition on oil, gas, and mineral development by accounting for technological advances in other forms of energy development.

In addition to creating consistency across the two zones, this prohibition will help advance the proposed sanctuary's draft goals and objectives by protecting sensitive marine ecosystems such as fragile coral reefs and deep-sea corals, benthic habitat, and seamounts. Prohibiting oil, gas, and mineral development reduces the risk of offshore spills, such as the Deepwater Horizon oil spill, that could significantly harm sanctuary resources. Deep seabed mining, oil and gas drilling, and other energy development activities, such as renewable energy system installation, destroys fragile benthic habitat, releases sequestered carbon, and spreads sediment plumes that can suffocate both sensitive shallow and deep-sea coral reefs, which negatively impacts nursery and foraging habitat for fish, and reduces the ecosystem's overall resilience.

2. Prohibition on Using or Attempting To Use Poisons, Electrical Charges, or Explosives in the Collection or Harvest of a Sanctuary Resource

NOAA is proposing this prohibition to be consistent with prohibitions identified in the presidential proclamations establishing the Monument.

3. Prohibition on Introducing or Otherwise Releasing an Introduced Species From Within or Into the Sanctuary

NOAA is proposing this prohibition to be consistent with prohibitions identified in the presidential proclamations establishing the Monument.

4. Prohibition on Deserting a Vessel

Deserting a vessel is currently a regulated activity (allowed only with a permit) in PMNM pursuant to Presidential Proclamation 8031. Deserting a vessel is a prohibited activity in the MEA pursuant to Presidential Proclamation 9478. NOAA does not see a need to permit this activity and is proposing this prohibition in part to create consistency in management across the proposed sanctuary. Prohibiting this activity would help to prevent desertion of a vessel following a sinking, grounding, or other incident. Prevention is much less expensive than responding to a deserted vessel and can optimally prevent impacts and damage to sanctuary resources as well as to private property.

5. Prohibition on Anchoring on or Having a Vessel Anchored on Any Living or Dead Coral With an Anchor, Anchor Chain, or Anchor Rope

NOAA is proposing this prohibition to be consistent with prohibitions identified in the presidential proclamations establishing the Monument.

6. Prohibition on Commercial Fishing and Possessing Commercial Fishing Gear Except When Stowed and Not Available for Immediate Use

Presidential Proclamation 8031 provided that commercial fishing for bottomfish and pelagic fish in PMNM that was permitted by NOAA prior to June 16, 2006 was allowed to continue for 5 years from the date of the proclamation, until June 15, 2011. After that date, Presidential Proclamation 8031 prohibited commercial fishing for

bottomfish and associated pelagic species in PMNM. Presidential Proclamation 9478 also prohibits commercial fishing, as well as possessing commercial fishing gear except when stowed and not available for immediate use during passage without interruption in the MEA. NOAA is proposing a sanctuary-wide prohibition on commercial fishing and possessing commercial fishing gear except when stowed and not available for immediate use to be consistent with the presidential proclamations establishing the Monument.

7. Prohibition on Non-Commercial Fishing and Possessing Non-Commercial Fishing Gear Except When Stowed and Not Available for Immediate Use

The presidential proclamations establishing the Monument broadly restrict the harvest of fishery resources by prohibiting removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging any living or nonliving monument resource, as well as attempts to do the same, except as may be allowed with a permit. As noted above, Presidential Proclamations 8031 and 9478 further specify prohibitions on commercial fishing and the possession of commercial fishing gear. The presidential proclamations also identify certain types of non-commercial fishing that may be regulated (*i.e.,* allowed pursuant to a permit or incidental to a permitted activity). Presidential Proclamation 8031, for example, authorizes sustenance fishing incidental to an activity permitted in PMNM. Presidential Proclamation 9478, for example, provides that non-commercial fishing is a regulated activity (*i.e.,* allowed only with a permit) in the MEA. In the sanctuary, NOAA is proposing, for consistency with the proclamations, that ''non-commercial fishing'' is prohibited unless conducted pursuant to a sanctuary permit or, as discussed below, authorized under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in the OSZ. The proposed rule adopts the definition of ''non-commercial fishing'' from the regulations for Fisheries in the Western Pacific, which is defined as ''fishing that does not meet the definition of commercial fishing in the Magnuson-Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous, and recreational fishing.'' 50 CFR 665.12.

NOAA also proposes that ''possessing non-commercial fishing gear except when stowed and not available for immediate use'' is prohibited unless conducted pursuant to a sanctuary permit or, as discussed below, authorized under the MSA in the OSZ. Presidential Proclamation 8031 includes ''possessing fishing gear,'' as a regulated activity (allowed only with a permit) in PMNM. Presidential Proclamation 9478 prohibits possessing commercial fishing gear. NOAA's proposal creates continuity between the two areas, and aims to ensure that non-commercial gear is not utilized in an unauthorized manner that could lead to injury to sanctuary resources.

8. Prohibition on Drilling Into, Dredging, or Otherwise Altering the Submerged Lands; or Constructing, Placing, or Abandoning Any Structure, Material, or Other Matter on the Submerged Lands

This activity is a regulated activity (*i.e.,* allowed only with a permit) in PMNM under Presidential Proclamation 8031. In the MEA, Presidential Proclamation 9478 prohibits this type of activity, except for when conducted for the use of scientific instruments, which is allowed only with a permit, subject to such terms and conditions as the Secretaries deem appropriate. In the sanctuary, NOAA is proposing that these activities are prohibited unless conducted pursuant to a sanctuary permit. In the OSZ, such a permit may only be issued for scientific instruments.

9. Prohibition on Removing, Moving, Taking, Harvesting, Possessing, Injuring, Disturbing, or Damaging; or Attempting To Remove, Move, Take, Harvest, Possess, Injure, Disturb, or Damage Any Living or Nonliving Sanctuary Resource

NOAA is proposing that these activities are prohibited unless conducted pursuant to a sanctuary permit, consistent with the presidential proclamations establishing the Monument.

10. Prohibition on Attracting Any Living Sanctuary Resource

NOAA is proposing that these activities are prohibited unless conducted pursuant to a sanctuary permit. NOAA is proposing this prohibition to be consistent with a regulated activity identified in Presidential Proclamation 8031 for PMNM. This prohibition would be new in the area of sanctuary that overlaps with the MEA, the OSZ. Prohibiting this activity is intended to address the potential for harassment and disturbance from human interactions with living sanctuary resources.

11. Prohibition on Touching Coral, Living or Dead

NOAA is proposing that this activity is prohibited unless conducted pursuant to a sanctuary permit. NOAA is proposing this prohibition to be consistent with a regulated activity (*i.e.,* allowed only with a permit) identified in Presidential Proclamation 8031 for PMNM. This prohibition would be new for the area of sanctuary that overlaps with the MEA, the OSZ. However, prohibition 9 effectively includes this activity, as touching coral is considered a disturbance which may cause injury or damage. Therefore, regulating this activity for the area of the proposed sanctuary that overlaps with the MEA, the OSZ, is primarily a technical addition which provides clarity to the public and resource managers.

12. Prohibition on Swimming, Snorkeling, or Closed or Open Circuit SCUBA Diving

NOAA is proposing that these activities are prohibited unless conducted pursuant to a sanctuary permit. NOAA is proposing this prohibition to be consistent with a regulated activity identified in Presidential Proclamation 8031 for any Special Preservation Area or the Midway Atoll Special Management Area. This prohibition would be new for areas of PMNM that fall outside of any Special Preservation Area or the Midway Atoll Special Management Area, and for the MEA. Expanding this regulated activity to the entire area of the proposed sanctuary allows NOAA to ensure that all in-water activities are done in compliance with the permit findings criteria and requirements, and are consistent with the care and management of sanctuary resources.

13. Prohibition on Discharging or Depositing Any Material or Other Matter Into the Sanctuary, or Discharging or Depositing Any Material or Other Matter Outside of the Sanctuary That Subsequently Enters the Sanctuary and Injures or Has the Potential To Injure Any Resources of the Sanctuary, Except as Described for Vessel Passage Without Interruption

NOAA is proposing that these activities are prohibited unless conducted pursuant to a sanctuary permit. NOAA is proposing this prohibition to be consistent with regulated activities identified in Presidential Proclamation 8031 for PMNM. NOAA proposes an exception to this activity for vessel passage without interruption, so long as any discharge is limited to ''vessel engine cooling water,

weather deck runoff, and vessel engine exhaust within Special Preservation Areas or the Midway Atoll Special Management Area; and discharge incidental to vessel operations such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust in areas other than Special Preservation Areas or the Midway Atoll Special Management Area.'' While this prohibition would technically be new for the area of the proposed sanctuary that overlaps with the MEA, the OSZ, Presidential Proclamation 9478 effectively includes this activity. Regulating this activity for the OSZ provides clarity to the public and resource managers. Further, the prohibition on discharges within or into the sanctuary is proposed in recognition that various substances can be discharged from vessels or from infrastructure or individuals along the shoreline that can harm sanctuary resources or qualities. Establishing a cohesive regulatory framework across the proposed sanctuary would benefit sanctuary resources and sanctuary users.

14. Prohibition on Anchoring a Vessel

NOAA is proposing that this activity is prohibited unless conducted pursuant to a sanctuary permit. While this activity may be permitted via a sanctuary permit, anchoring on living or dead coral may never be permitted, as noted above under prohibition 5. NOAA is proposing this prohibition on anchoring a vessel, for consistency with a regulated activity identified in Presidential Proclamation 8031 for PMNM and because there is the potential for sanctuary resources, other than corals, to be impacted by anchoring. This prohibition would be new for the area of the proposed sanctuary that overlaps with the MEA, the OSZ. As stated above in Section E, NOAA proposes that a vessel may pass through the sanctuary without requiring a permit as long as the vessel does not stop, anchor or engage in prohibited activities within the sanctuary. Therefore, including this prohibition on anchoring a vessel also provides clarity to the public, resource managers, and enforcement personnel that all users of the proposed sanctuary—vessels conducting passage without interruption and permittees—are subject to the same prohibition on anchoring a vessel unless conducted pursuant to a sanctuary permit.

H. Exemptions for Emergencies

Consistent with existing management of this area, the proposed prohibitions for the proposed sanctuary would not apply to any activity necessary to respond to emergencies that threaten life, property, or the environment, or to activities necessary for law enforcement purposes.

I. U.S. Armed Forces Exemption

Consistent with existing management of this area, NOAA proposes a broad exemption to allow activities and exercises of the U.S. Armed Forces, including those carried out by the U.S. Coast Guard. NOAA recognizes that this broad exemption is necessary to ensure military readiness for the Department of Defense to conduct existing training, operations, and military readiness activities in the area proposed to be designated as a national marine sanctuary. The United States military has been able to maintain readiness and conduct training and other operations in other national marine sanctuaries based on similar broad exemptions.

All activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on sanctuary resources and qualities. For any actions of the Armed Forces that are likely to destroy, cause the loss of, or injure sanctuary resources, the Armed Forces must comply with the Interagency Cooperation requirements outlined in section 304(d) of the NMSA, regardless of whether those actions are exempted from the proposed sanctuary's prohibitions.

J. Exemption for Non-Commercial Fishing

NOAA is proposing to exempt non-commercial fishing authorized under the MSA in the area of the sanctuary that overlaps with the MEA, the OSZ, from prohibitions 7 through 14 in the proposed rule, provided that no sale of harvested fish occurs. NOAA has prepared a separate proposed rule under the MSA which shall serve as the primary mechanism for authorizing non-commercial fishing activities. NOAA would periodically evaluate the effect of non-commercial fishing activities on sanctuary resources. Such evaluations would take into consideration the best scientific information available and evaluate whether additional actions are necessary for the proper care and management of Sanctuary resources, including fishery resources, consistent with goals and objectives of the Sanctuary. This exemption would only apply to the OSZ.

K. Sanctuary Permit Procedures and Criteria

1. Sanctuary General Permits

NOAA is proposing to include authority to issue sanctuary general permits to allow certain activities that would otherwise violate prohibitions 7 through 14. The proposed permitting system is modeled after the existing Monument permitting system. The proposed permitting system would not supplant the joint permitting system for PMNM, and was developed to ensure a continued joint permitting system administered by Monument co-managers. NOAA may develop Memorandum of Agreements in the future to add further clarification on joint-permitting within portions of the sanctuary that overlap with existing permitting programs for the Monument.

National marine sanctuary program-wide regulations at 15 CFR 922.30 describe different purposes for which a sanctuary general permit can be issued. Three of these which would apply to this proposed sanctuary are:

- Research—activities that constitute scientific research or scientific monitoring of a national marine sanctuary resource or quality;
- Education—activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resource or quality; and
- Management—activities that assist in managing a national marine sanctuary.

NOAA is proposing to add two additional permit categories to 15 CFR 922.30 under which a sanctuary general permit could be issued in the proposed sanctuary:

- Native Hawaiian Practices—activities that allow for Native Hawaiian practices within the proposed sanctuary; and
- Recreation—recreational activities within the proposed sanctuary limited to the Midway Atoll Special Management Area.

NOAA is proposing these two additional general permit categories to be consistent with the types of activities permitted for the PMNM.

The general regulations in 15 CFR part 922, subpart D, relating to the permit application process, review procedures, amendments, and other permitting stipulations would apply. These national permitting regulations include a list of factors NOAA considers in deciding whether or not to issue the permit, such as whether the activity must be conducted within the sanctuary, and whether the activity will be compatible with the primary

objective of protection of sanctuary resources and qualities. NOAA would be able to impose specific terms and conditions through a permit as appropriate.

In addition to permit review procedures and evaluation criteria in 15 CFR 922.33, some additional permit review criteria would apply in the proposed sanctuary, including additional criteria specific to Native Hawaiian Practices permits and Recreation permits. NOAA is proposing these additional permit criteria to be consistent with the permit criteria for PMNM.

2. Special Use Permits

NOAA has the authority to issue special use permits (SUPs) in national marine sanctuaries, as established by section 310 of the NMSA (16 U.S.C. 1441) and by 15 CFR 922 subpart D. SUPs can be used to authorize specific activities in a sanctuary if such authorization is necessary to establish conditions of access to, and use of, any sanctuary resource or to promote public use and understanding of a sanctuary resource. Section 310 of the NMSA establishes four requirements for SUPs: (1) activities must be compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources; (2) SUPs shall not authorize the conduct of any activity for a period of more than five years unless otherwise renewed; (3) activities carried out under the SUP must be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and (4) permittees are required to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the SUP and to agree to hold the United States harmless against such claims. The NMSA authorizes NOAA to assess and collect fees for the conduct of any activity under an SUP, including costs incurred, or expected to be incurred, in issuing the permit and the fair market value use of sanctuary resources. Implementing regulations at 15 CFR 922.35 provide additional detail on assessment of fees for SUPs. As is the case with sanctuary general permits, NOAA can place conditions on SUPs specific to the activity being permitted. NOAA shall provide appropriate public notice before identifying any category of activity subject to a special use permit.

NOAA is not proposing any new SUP category as part of this designation. In evaluating applications for special use permits, NOAA would consider all applicable permitting requirements, including permitting procedures and criteria under the Monument's existing management framework. For example, certain activities may be subject to the requirements of special ocean use permits, as authorized by Presidential Proclamation 8031, and issued by Monument managers in the PMNM via 40 CFR 404.11. Special ocean use permit requirements were modeled after SUPs, but also include a few additional requirements, such as for activities within the Midway Atoll Special Management Area.

3. Sustenance Fishing

NOAA may authorize sustenance fishing outside of any Special Preservation Area as a term or condition of any sanctuary permit. Sustenance fishing is fishing for bottomfish or pelagic species in which all catch is consumed within the sanctuary. Sustenance Fishing is allowed incidental to an activity permitted in the PMNM under Presidential Proclamation 8031, and in regulations at 50 CFR part 404. Sustenance fishing was not specifically identified in Presidential Proclamation 9478 governing the MEA but is allowable. For consistency in management and permitting, NOAA proposes allowing for this activity as a term or condition of a general permit or special use permit.

4. VMS

To complement existing management and provide consistency across the entirety of the sanctuary, an owner or operator of a vessel that has been issued a general permit or special use permit under 15 CFR subpart D must ensure that such vessel has a NOAA Office of Law Enforcement (OLE)-approved Vessel Monitoring System (VMS) on board when operating within the sanctuary. Presidential Proclamation 8031 requires an owner or operator of a vessel that has been issued a permit for accessing the PMNM to have an OLE-approved VMS on board. Such a requirement was not included in Presidential Proclamation 9478. For consistency in permitting, and for the reasons identified below, NOAA proposes to impose this requirement across the proposed sanctuary.

NOAA proposes this requirement to support permit compliance, enforcement, and other incidental uses, consistent with the long-standing history of considering and implementing the use of vessel monitoring systems in the area of the proposed sanctuary, beginning with Executive Order 13178 in 2000. In directing the Secretary to manage the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, section 5(b) of Executive Order 13178 indicated that priority issues and actions must include enforcement and surveillance, including the use of new technologies, as well as the use of vessel monitoring systems, if warranted. The 2005 Final Reserve Operations Plan included an Enforcement Action Plan with strategies to investigate innovative technology that would be effective for this large, remote area, as well as to implement VMS. In 2006, Presidential Proclamation 8031, as noted above, required an OLE-approved VMS on board of vessels with permits to access the PMNM. VMS is currently being utilized in the PMNM and is part of the Monument Management Plan's Enforcement Action Plan. The Monument Management Plan highlights, as an example, that when the 85-foot longliner *Swordman I,* carrying more than 6,000 gallons of diesel fuel and hydraulic oil, ran aground at Pearl and Hermes Reef in 2000, vessel monitoring system technology allowed agents to track the disaster and quickly send out equipment for an extensive cleanup.

L. Scientific Exploration and Research by the Department of Commerce and the Department of the Interior

Presidential Proclamation 9478 stipulates that the prohibitions required by the proclamation ''shall not restrict scientific exploration or research activities by or for the Secretaries and nothing in this proclamation shall be construed to require a permit or other authorization from the other Secretary for their respective scientific activities.'' NOAA is proposing to exempt these activities within the OSZ to be consistent with Presidential Proclamation 9478.

M. Other Conforming Amendments

The Regulations of General Applicability at 15 CFR part 922, subpart A, and the regulations related to National Marine Sanctuary Permitting, 15 CFR part 922, subpart D, would have to be amended so that the regulations are accurate and up-to-date. The modified sections to conform to adding a new sanctuary are as follows:

- Section 922.1 Purposes and applicability of the regulations;
- Section 922.4 Boundaries;
- Section 922.6 Prohibited or otherwise regulated activities;
- 922.30 National Marine Sanctuary general permits;
- 922.33 Review procedures and evaluation; and
- 922.37 Appeals of permitting decisions.

IV. Requests for Comments

NOAA is requesting comments on this proposed rule, including comments on the terms of designation and the proposed regulations, the DEIS, and the DMP for the proposed sanctuary. NOAA will publish the final EIS and final management plan following public review and comment on this proposed rule and following NOAA's consideration of substantive comments received. NOAA also requests comments on the Regulatory Flexibility Act certification and economic analysis. The preamble of the final rule will include responses to substantive comments received on the proposed rule. The full response to comments, which includes responses to comments made on the proposed rule, the DEIS, and the draft management plan, will be provided as an Appendix to the Final EIS.

Sensitive personally identifiable information, such as account numbers and Social Security numbers, should not be included with the comment. Comments that are not related to designation of the proposed sanctuary or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

V. Classification

A. National Marine Sanctuaries Act

NOAA consulted with the Western Pacific Regional Fishery Management Council (Council) as required by section 304(a)(5) of the NMSA. Through this consultation, NOAA provided the Council with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. NOAA initiated the consultation on November 19, 2021. On March 22, 2022, the Council agreed to develop draft fishing regulations for the proposed sanctuary. NOAA participated in six public meetings hosted by the Council on November 1st, 3rd, 4th, 5th, 8th, and 10th of 2022, which were focused on the development of fishing regulations for the area of the proposed sanctuary that overlaps with the MEA. At its 193rd meeting in December of 2022, the Council provided a final recommendation. NOAA found that the final recommendation, in part, did not fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed designation. The Council amended their recommendation during their 194th meeting in March of 2023, and submitted a revised final recommendation to NOAA on April 14, 2023.

In May of 2023, NOAA accepted the majority of the Council's recommendation as it fulfilled the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. However, the Council's recommendation for the disposition of Native Hawaiian Subsistence Practices Fishing catch, which would provide permit applicants the ability to request limited cost recovery by selling their catch was rejected by NOAA via a decision letter dated May 31, 2023. As NOAA explained in the letter, any recommendation for the allowance of ''sale'' is inconsistent with the goals and objectives of the proposed sanctuary designation. NOAA Fisheries has prepared a proposed rule under the MSA and ONMS has prepared this proposed rule under the NMSA to reflect the outcome of the NMSA section 304(a)(5) process.

Pursuant to section 304(a)(1)(C) of the NMSA, the Committee on Natural Resources of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Governor of Hawai'i will have the opportunity to review this proposed action.

B. National Environmental Policy Act

As described in section I above, NOAA and the State of Hawai'i prepared a DEIS to evaluate the impacts of this proposed action of designating a national marine sanctuary, which considers four alternatives for the proposed designation of a national marine sanctuary in marine portions of the Monument. Copies of the DEIS and related draft management plan are available at the website listed in the **ADDRESSES** section of this proposed rule. NOAA is also soliciting public comments on the DEIS and DMP. The full response to comments, which includes responses to comments made on the proposed rule, the DEIS, and the draft management plan, will be provided as an Appendix to the Final EIS.

C. Executive Orders 12866: Regulatory Impact, 13563 Improving Regulation and Regulatory Review, and 14094: Modernizing Regulatory Review

The Office of Management and Budget (OMB) has determined this proposed rule to be not significant within the meaning of Executive Order 12866, as supplemented by Executive Order 14094.

D. Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132 because NOAA supplements and complements State and local laws under the NMSA rather than supersedes or conflicts with them. This proposed rule will not have substantial direct effects on State or local governments. NOAA has coordinated closely with State partners throughout the development of this proposed rule and, where applicable and practicable, the proposed rule aligns with existing State regulations. NOAA has aimed for consistent regulations throughout sanctuary waters including those within State and Federal jurisdiction.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking, unless the agency certifies, pursuant to 5 U.S.C. 605, that the action will not have significant economic impact on a substantial number of small entities. The RFA requires agencies to consider, but not necessarily minimize, the effects of proposed rules on small entities. The goal of the RFA is to inform the agency and public of expected economic effects of the proposed rule and to ensure the agency considers alternatives that minimize the expected economic effects on small entities while meeting applicable goals and objectives.

Pursuant to section 605(b) of the RFA, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The purpose, context, and statutory basis for this action is described above and not repeated here. The analysis below discusses the potential effects of the proposed designation of marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary and serves as the factual basis for the certification. In summary, with this proposed rulemaking, small entities are not expected to experience significant impacts.

1. Description and Estimate of the Number of Small Entities to Which the Proposed Action Would Apply

Under the Monument's existing management framework, activities in the Monument, with limited exceptions, require a permit. The same would be true in the proposed sanctuary. Based on permitting data for the Monument, there are six primary categories of regulated uses: (1) research; (2) conservation and management; (3) education; (4) Native Hawaiian practices; (5) recreation; and (6) special ocean use. Table 1 shows the number of permits issued by category from 2018 to 2022. Based on permitting data, the types of entities applying for permits include, government, non-profits, artists, film and entertainment entities, education providers, and research organizations. Additionally, ship reporting is required for vessels that transit through portions of the Monument, and the types of entities impacted are identified as finfish fishing or deep-sea freight transit (73 FR 38375 (July 7, 2008)).

TABLE 1—PERMITS ISSUED BY YEAR AND TYPE

	Research	Conservation and management	Education	Native Hawaiian practices	Recreation	Special ocean use	Total
2018	7	3	4	4	0	3	21
2019	7	6	0	2	0	1	16
2020	1	5	0	0	0	2	8
2021	8	2	1	4	0	3	18
2022	5	3	0	0	0	1	9
2018–2022 Total	28	19	5	10	0	10	72
2018–2022 Annual Average	5.6	3.8	1	2	0	2	14.4

Source: (NOAA Office of National Marine Sanctuaries, Papahānaumokuākea Marine National Monument Permit Records, 2023).

The U.S. Small Business Administration establishes size standards for determining whether a business entity qualifies as small. NOAA has analyzed the types of entities that applied for permits by category and identified the relevant industries impacted by the proposed rule as colleges and universities, apprenticeship training, environment, conservation and wildlife organizations, civic and social organizations, television broadcasting stations, motion picture and video production, geophysical surveying and mapping services, independent artists, writers, performers, and museums. Each relevant industry is shown in the table below with the most recent size standards published by the U.S. Small Business Administration (2023). Size standards are based upon the average annual receipts (all revenue) or the average employment of a firm.

TABLE 2—SIZE STANDARD IN MILLIONS OF DOLLARS BY NORTH AMERICAN CLASSIFICATION SYSTEM (NAICS) CODE AND INDUSTRY DESCRIPTION FOR SELECTED INDUSTRIES

NAICS industry description	NAICS code	Size standard (millions of dollars)
Colleges, universities and professional schools	611310	$34.5
Apprenticeship Training	611513	11.5
Environment, Conservation and Wildlife Organizations	813312	19.5
Civic and Social Organizations	813410	9.5
Television Broadcasting Stations	516120	47.0
Motion Picture and Video Production	512110	40.0
Geophysical Surveying and Mapping Services	541360	28.5
Independent Artists, Writers, and Performers	711510	9.0
Museums	712110	34.0
Finfish Fishing	114111	25.0
Deep Sea Freight	483111	*1,050

Source: 13 CFR part 121, 2023.
*Number of employees. A size standard is not identified in dollars.

Table 3 provides the approximate number of permits issued for each corresponding industry. The Monument permit application itself does not ask the applicant for their industry or if the applicant is a small entity. Therefore, the data presented below is based on limited information from the permit application, specifically the applicant's name and stated purpose for the permit.

TABLE 3—APPROXIMATE PERMITS BY INDUSTRY DESCRIPTION

NAICS industry description	2018	2019	2020	2021	2022
Colleges, universities and professional schools	7	2	1	9	4
Apprenticeship Training	2	0	0	2	0
Environment, Conservation and Wildlife Organizations	1	2	2	3	0
Civic and Social Organizations	2	1	0	2	0
Television Broadcasting Stations	2	0	0	0	0
Motion Picture and Video Production	1	0	1	4	1

TABLE 3—APPROXIMATE PERMITS BY INDUSTRY DESCRIPTION—Continued

NAICS industry description	2018	2019	2020	2021	2022
Geophysical Surveying and Mapping Services	1	1	0	2	1
Independent Artists, Writers, and Performers	0	1	1	0	0
Museums	1	0	0	0	0

Source: (NOAA Office of National Marine Sanctuaries, Papahānaumokuākea Marine National Monument Permit Records, 2023).

Regarding ship reporting requirements, NOAA estimated there would be approximately 200–250 vessels passing through reporting areas of the proposed sanctuary without interruption that would be subject to providing entry and exit notifications, based on vessel traffic reported between 2017 and 2023.

The data provided in Tables 1, 2, and 3 provide information on the type of permit applications, the industries that may be impacted, and the number of permits by corresponding industry. NOAA does not have economic data on whether the permittees within the corresponding industries are small entities or not. Due to the lack of quantitative data on the nature of businesses directly affected by the proposed rule including their levels of revenues, costs, and profits from their activities within the sanctuary, the analysis provided here is qualitative. Based upon site interactions and working relationships with permittees, the types of small entities that may be impacted by this proposed rule include academic and government institutions, non-profit organizations, and broadcast and video production entities. In addition, U.S. fishing vessels are expected to be impacted by this rulemaking, and all are considered to be small entities. U.S. freight transport vessels are expected to be affected by this rulemaking, though none are considered to be small entities.

2. Analysis of Small Entities

The proposed sanctuary regulations would largely mirror the existing management framework for the Monument. There would be no effective difference in the permitting process between the proposed action and the status quo for permitting within PMNM. The proposed regulatory action would establish new permitting requirements for entities that seek access to areas of the proposed sanctuary that overlap with the MEA, the OSZ. While access restrictions for portions of the proposed sanctuary that overlap with the MEA would be new, the activities that may be permitted would be consistent with Presidential Proclamation 9478.

Therefore, the proposed regulatory action would establish new reporting and recordkeeping requirements for entities that apply for permits in the area of the proposed sanctuary that overlaps with the MEA, the OSZ, but is not expected to have a significant economic impact on a substantial number of small entities for the following reasons. Based on the NOAA Monument manager's site knowledge and experience, the proposed regulatory action is not expected to result in an increase in the number of permit requests, as the majority of users operate in the area of the proposed sanctuary that overlaps with PMNM, and do not solely operate in the area of the proposed sanctuary that overlaps with the MEA. Additionally, the area under consideration is coextensive with the marine areas of the Monument, extremely remote (nearly 300 miles at its closest point from the main Hawaiian Islands), and very few entities operate there.

Through this proposed rule, NOAA does not expect a significant reduction in profits for small entities. NOAA does not charge a fee for review and issuance of general permits, and there are only minimal, indirect costs associated with the time for an individual to complete a permit application and respond to any follow-up questions from NOAA. While NOAA may assess fees for the conduct of any activity authorized under a special use permit, fees are not required, and decisions are made on a case-by-case basis. No unique professional skills are necessary to meet these reporting requirements. In addition, the process by which all applicants apply for a permit, or complete entry and exit notifications for passage without interruption through certain areas within the proposed sanctuary, would not substantially differ from the current process. Therefore, these additional permitting requirements would not significantly reduce profits for a substantial number of small entities. The public reporting burden for Monument permits is provided in table 4. The public reporting burden differs by permit category.

TABLE 4—HOURLY BURDEN OF THE INFORMATION COLLECTION FOR PAPAHĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT PERMITS

Information collection	Annual # of responses/ respondent	Burden hours/ response	Mean occupational employment hourly wage rates (for type of respondent)	Annual wage burden costs per permit
General permit	3	5	$36.62	$549.30
Special Ocean Use permit	3	10	40.83	1,224.9
Native Hawaiian Practices permit	3	8	36.62	878.88
Recreation permit	3	6	24.98	449.64

Source: (NOAA Office of National Marine Sanctuaries, Papahānaumokuākea Marine National Monument Permit Records, 2023).

Under the existing Monument management framework, as a condition of a permit, permittees are required to have a NOAA OLE type-approved VMS on board when operating within the PMNM. The cost of a VMS unit is $3,150. Annualized over 3 years (the life of the unit) the cost per year is $1,050.00 per year with an additional

estimated $100.00 in annual maintenance costs, and $192.00 in VMS report transmission costs ($1.28 daily cost based on a high estimate that a permitted vessel may spend on average, 150 days per year in the Monument), for a total annual VMS cost of $1,342. The proposed rule includes this requirement for areas of the proposed sanctuary that overlap with both the PMNM and MEA. However, the proposed rule is not expected to result in an increase in the number of permit requests, as the majority of users operate in the area of the proposed sanctuary that overlaps with PMNM, and do not solely operate in the area of the proposed sanctuary that overlaps with the MEA. Therefore, this additional permit requirement is not expected to result in an increase in the number of required VMS units, or a significant financial burden to small entities.

Through this proposed rule, the process for ship reporting for vessels transiting through areas of the proposed sanctuary would not substantially differ from the current process. The proposed regulatory action would not establish any new reporting or record-keeping requirements related to ship reporting.

As described above, NOAA does not expect a significant reduction in profits for small entities, as the expected costs are minimal, indirect costs for permit applications, and does not expect an increase in permit applications as users are already required to have a permit to access PMNM. NOAA has concluded that the proposed rule would not have a significant impact on a substantial number of small entities. Therefore, an Initial Regulatory Flexibility Analysis is not required and none was prepared.

F. Paperwork Reduction Act

Notwithstanding any other provisions of the 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 (PRA), 44 U.S.C. 3501 *et seq.,* unless that collection of information displays a currently valid OMB control number.

NOAA has an OMB control number (0648–0548) for the collection of public information related to the processing of PMNM permit applications and reports for permits. In the most recent Information Collection Request revision and approval for PMNM permits, NOAA reported approximately 74 permit respondents per year. NOAA's proposal to create a national marine sanctuary in the marine portions of the Monument is not expected to result in an increase in the number of requests for permits under this control number. Therefore, the annual public reporting burden hours for permits under OMB control number 0648–0548 is not expected to increase. A large increase in the number of permit requests would require a change to the reporting burden certified for OMB control number 0648–0548. While not expected, if such permit requests do increase, a revision to this control number for the processing of permits would be requested.

Please send any comments regarding the burden estimate for this data collection requirement or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (see **ADDRESSES** above). Comments can also be submitted to *www.reginfo.gov/public/do/PRAMain.* Before an agency submits a collection of information to OMB for approval, the agency shall provide 60-day notice in the **Federal Register**, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comments to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

G. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA, 54 U.S.C. 306108) requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to the undertaking. ''Historic property'' means any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and material remains that are related to and located within such properties, including properties of traditional religious and cultural importance to an Indigenous nation or Tribe or Native Hawaiian organization (see 36 CFR 800.16(l)).

The regulations implementing section 106 of the NHPA (36 CFR part 800) establish a process requiring Federal agencies to: (1) determine whether the undertaking is a type of activity that could affect historic properties; (2) identify historic properties in the area of potential effects; (3) assess potential adverse effects; and (4) resolve adverse effects. The regulations require that Federal agencies consult with States, Tribes, and other interested parties when making their effect determinations. NOAA has determined that the designation of a national marine sanctuary and related rulemaking for sanctuary-specific regulations meet the definition of an undertaking as defined at § 800.16(y).

In fulfilling its responsibilities under section 106 of the NHPA, NOAA initiated the section 106 review process with the State Historic Preservation Officer (SHPO) for the proposed sanctuary designation via letter to the State Historic Preservation Division (SHPD) through the Hawai'i Cultural Resource Information System on November 21, 2021. NOAA also provided notice to the Advisory Council on Historic Preservation (ACHP) on November 21, 2021. These letters and supporting documentation identified the proposed Area of Potential Effect (APE) and began the process to identify consulting parties (CP). Invitations were sent to over 500 families and organizations having lineal and cultural connections to Papahānaumokuākea, including cultural practitioners, Native Hawaiian Organizations, fishers (subsistence, recreational, commercial), and government agencies. As of January 21, 2023, NOAA received 31 requests to be a CP for the proposed sanctuary designation and NOAA has officially recognized the 31 CPs. NOAA will complete the identification of historic properties in the proposed APE and the assessment of the undertaking's potential to affect historic properties in consultation with the recognized consulting parties. To date, ONMS has conducted 6 meetings with recognized consulting parties. The NHPA section 106 review is ongoing, and additional consultations will be held following the release of the DEIS and DMP. As the DEIS is a joint Federal-State action, the State is also preparing a Cultural Impact Assessment (CIA) and Legal Analysis pursuant to the Hawai'i Environmental Policy Act (HEPA), Hawai'i Revised

Statutes (HRS) section 343, the corresponding Hawai'i Administrative Rules (HAR) section 11–200.1, and the Environmental Council's 1997 Guidelines for Assessing Cultural Impacts.

H. Sunken Military Craft Act

The Sunken Military Craft Act of 2004 (SMCA; Pub. L. 108–375, Title XIV, sections 1401 to 1408; 10 U.S.C. 113 note) preserves and protects from unauthorized disturbance all sunken military craft that are owned by the United States government, as well as foreign sunken military craft that lie within United States waters, as defined in the SMCA. Thousands of U.S. sunken military craft lie in waters around the world, many accessible to looters, treasure hunters, and others who may cause damage to them. These craft, and their associated contents, represent a collection of non-renewable and significant historical resources that often serve as war graves, carry unexploded ordnance, and contain oil and other hazardous materials. By protecting sunken military craft, the SMCA helps reduce the potential for irreversible harm to these nationally important historical and cultural resources.

The 1942 Battle of Midway occurred both at Midway Atoll as well as some 100–150 nautical miles north of the atoll in the northwestern portion of Papahānaumokuākea. Aircraft carriers from the historic conflict have been located in the deep ocean, and multiple aircraft and sunken military vessels have been surveyed within the Midway Atoll Special Management Area. Yet, hundreds of aircraft, and several other aircraft carriers and destroyers from the battle remain to be discovered in Papahānaumokuākea. Sunken military craft fall under the jurisdiction of a number of Federal agencies such as the U.S. Navy and the U.S. Coast Guard. NOAA and FWS coordinate very closely with the U.S. Navy and any other applicable Federal agency, foreign State, or State agency if found within State waters, regarding activities directed at sunken military craft discovered within the sanctuary.

K. Coastal Zone Management Act (CZMA)

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to consult with a State's coastal program on potential Federal agency activities that affect any land or water use or natural resource of the coastal zone. Because the proposed sanctuary lies partially within State waters, NOAA intends to submit a copy of this proposed rule and supporting documents, including the DEIS, to the State of Hawaii's Office of Planning and Sustainable Development for evaluation of Federal consistency under the CZMA. NOAA will publish the final rule and designation only after completion of the Federal consistency process under the CZMA.

L. Executive Order 12898: Environmental Justice

Executive Order 12898 directs Federal agencies to identify and address disproportionately high and adverse effects of their actions on human health and the environment of minority or low-income populations. The designation of national marine sanctuaries by NOAA helps to ensure the enhancement of environmental quality for all populations in the United States. The proposed sanctuary designation would not result in disproportionate negative impacts on any minority or low-income population. In addition, many of the potential impacts from designating the proposed sanctuary would result in long-term or permanent beneficial impacts by protecting resources, which may have a positive impact on communities by providing employment and educational opportunities, and potentially result in improved ecosystem services.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure; Coastal zone; Cultural resources; Environmental; Protection; Fishing; Historic preservation; Marine protected areas; Marine resources; Natural resources; National marine sanctuaries; Penalties; Recreation and recreation areas; Reporting and recordkeeping requirements; Shipwrecks; Wildlife.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

Regulatory Amendments and Additions

For the reasons set forth above, NOAA proposes to amend part 922, title 15 of the Code of Federal Regulations as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Amend § 922.1 by revising paragraph (a)(2) to read as follows:

§ 922.1 Purposes and applicability of the regulations.

(a) * * *

(2) To implement the designations of the national marine sanctuaries, for which specific regulations appear in subpart F through subsequent subparts, by regulating activities affecting them, consistent with their respective terms of designation, in order to protect, restore, preserve, manage, and thereby ensure the health, integrity, and continued availability of the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological, and aesthetic resources and qualities of these areas.

* * * * *

■ 3. Revise § 922.4 to read as follows:

§ 922.4 Boundaries.

Subpart F and subsequent subparts of this part set forth the boundaries for all national marine sanctuaries.

■ 4. Revise § 922.6 to read as follows:

§ 922.6 Prohibited or otherwise regulated activities.

Subpart F and subsequent subparts of this part set forth site-specific regulations applicable to the activities specified therein.

■ 5. Amend § 922.30 by:

■ a. Revising paragraph (a)(2);

■ b. Removing the word ''and'' at the end of paragraph (b)(5);

■ c. Removing the period at the end of paragraph (b)(6) and adding ''; and'' in its place; and

■ d. Adding paragraphs (b)(7) and (8).

The additions read as follows:

§ 922.30 National Marine Sanctuary general permits

(a) * * *

(2) The permit procedures and criteria for all national marine sanctuaries in which the proposed activity is to take place in accordance with relevant site-specific regulations appearing in subpart F and subsequent subparts of this part.

* * * * *

(b) * * *

(7) Native Hawaiian Practices—activities that allow for Native Hawaiian practices within Papahānaumokuākea and

(8) Recreation—recreational activities within Papahānaumokuākea limited to the Midway Atoll Special Management Area.

■ 6. Amend § 922.33 by removing the word ''and'' at the end of paragraph (a)(8), removing the period at the end of paragraph (a)(9) and adding ''; and'' in

its place, and by adding paragraphs (a)(10), (11), and (12).

The additions read as follows:

§ 922.33 Review procedures and evaluation.

(a) * * *

(10) For Papahānaumokuākea National Marine Sanctuary, there is no practicable alternative to conducting the activity within the sanctuary and the activity can be conducted with adequate safeguards for the resources and ecological integrity of the sanctuary.

(11) For Native Hawaiian Practices within Papahānaumokuākea National Marine Sanctuary:

(i) The activity is non-commercial and will not involve the sale of any organism or material collected;

(ii) The purpose and intent of this activity is appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (pono), and demonstrates an understanding of, and background in, the traditional practice, and its associated values and protocols;

(iii) The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community; the activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands; and

(iv) Any sanctuary resource harvested from the sanctuary will be consumed in the sanctuary.

(12) For Recreation permits within Papahānaumokuākea National Marine Sanctuary:

(i) The activity is for the purpose of recreation within the Midway Special Management Area;

(ii) The activity is not associated with any for-hire operation; and

(iii) The activity does not involve any extractive use.

* * * * *

■ 7. Amend 922.37 by revising paragraphs (a)(2) and (3) to read as follows:

§ 922.37 Appeals of permitting decisions.

(a) * * *

(2) Except for Papahānaumokuākea National Marine Sanctuary, an applicant or a holder of a National Marine Sanctuary permit issued pursuant to § 922.30 or pursuant to site-specific regulations appearing in subparts F through subsequent subparts of this part;

(3) Except for Papahānaumokuākea National Marine Sanctuary, an applicant or a holder of a special use permit issued pursuant to section 310 of the Act and § 922.31;

* * * * *

■ 8. Add subpart W to read as follows:

Subpart W—Papahānaumokuākea National Marine Sanctuary

Sec.

Subpart W—Papahānaumokuākea National Marine Sanctuary

§ 922.240 Boundary.

Papahānaumokuākea National Marine Sanctuary consists of an area of approximately 582,570 square miles (439,910 square nautical miles) of Pacific Ocean waters surrounding the Northwest Hawaiian Islands and the submerged lands thereunder. The precise boundary coordinates are listed in appendix A to this subpart. The outer seaward sanctuary boundary begins approximately 200 nautical miles SW of Kure Atoll at Point 1 and continues from this point roughly north to each successive point in numerical order to Point 232 which is approximately 204 nautical miles north of Kure Atoll. From Point 232 the sanctuary boundary continues roughly ESE to each successive point in numerical order to Point 609 which is approximately 200 nautical miles NE of Necker Island. From Point 609 the sanctuary boundary continues south to Point 610 which is approximately 90 nautical miles ENE of Necker Island. From Point 610 the sanctuary boundary continues roughly east and then SE and south to Point 635 which is approximately 50 nautical miles east of Nihoa. From Point 635 the sanctuary boundary continues roughly south and then SW and west to each successive point in numerical order to Point 662 which is approximately 71 nautical miles SW of Nihoa. From Point 662 the sanctuary boundary continues south to Point 663 which is approximately 236 nautical miles SSW of Nihoa. From Point 663 the sanctuary boundary continues roughly NW to each successive point in numerical order to Point 703 which is approximately 200 nautical miles SSE of Necker Island. From Point 703 the boundary continues roughly NW to each successive point in numerical order to Point 1128 where it ends approximately 200 nautical miles SW of Kure Atoll. The inner landward boundary of the sanctuary follows the shoreline as defined by the State of Hawai'i (HAR § 13–222).

§ 922.241 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart. To the extent that a term appears in § 922.11 and this section, the definition in this section governs.

Areas to be avoided (ATBA) means the four designated areas that should be avoided by vessels that are conducting passage without interruption through the sanctuary. The precise boundary coordinates for the ATBAs are listed in appendix E to this subpart.

Bottomfish species means all species of bottomfish as defined at 50 CFR 665.201.

Commercial fishing means, as defined in the Magnuson-Stevens Fishery Conservation and Management Act, fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade.

Ecological integrity means a condition determined to be characteristic of an ecosystem that has the ability to maintain the function, structure, and abundance of natural biological communities, including rates of change in response to natural environmental variation.

Midway Atoll Special Management Area means the area of the sanctuary surrounding Midway Atoll out to a distance of 12 nautical miles. The coordinates are listed in appendix C to this subpart.

Native Hawaiian practices means cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of sanctuary resources for direct personal consumption while in the sanctuary.

Non-commercial fishing means fishing that does not meet the definition of commercial fishing in the Magnuson-Stevens Fishery Conservation and

Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous, and recreational fishing.

Office of Law Enforcement (OLE) means NOAA, National Marine Fisheries, Office of Law Enforcement.

Outer Sanctuary Zone (OSZ) means the waters and submerged lands extending from approximately 50 nautical miles from all islands and emergent lands of the Northwestern Hawaiian Islands to the extent of the seaward limit of the United States Exclusive Economic Zone (U.S. EEZ) west of 163° West Longitude. The precise boundary coordinates for the OSZ are listed in appendix B to this subpart.

Particularly Sensitive Sea Area (PSSA) means an area that needs special protection through action by IMO because of its significance for recognized ecological, socio-economic, or scientific attributes where such attributes may be vulnerable to damage by international shipping activities.

Pelagic species means Western Pacific Pelagic Management Unit Species as defined at 50 CFR 665.800.

Pono means appropriate, correct, and deemed necessary by traditional standards in Hawaiian culture.

Recreational activity means an activity conducted for personal enjoyment within the Midway Atoll Special Management Area that does not result in the extraction of sanctuary resources and that does not involve a fee-for-service transaction. This includes, but is not limited to, wildlife viewing, SCUBA diving, snorkeling, and boating.

Reporting area means the area of the proposed sanctuary that extends outward ten nautical miles from the PSSA boundary, as designated by the IMO, and excludes the ATBAs that fall within the PSSA boundary. The precise boundary coordinates for the reporting area are listed in appendix E to this subpart.

Scientific instrument means a device, vehicle, or tool used for scientific purposes and is inclusive of structures, materials, or other matter incidental to proper use of such device, vehicle, or tool.

Special Preservation Area (SPA) means discrete, biologically important areas of the sanctuary within which uses are subject to certain conditions, restrictions, and prohibitions, including but not limited to access restrictions. The coordinates are listed in Appendix D to this subpart.

Stowed and not available for immediate use means not readily accessible for immediate use, *e.g.,* by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (*e.g.,* spear shafts being kept separate from spear guns).

Sustenance fishing means fishing for bottomfish or pelagic species in which all catch is consumed within the sanctuary, and that is incidental to an activity permitted under this part.

Vessel monitoring system (VMS) means a mobile transceiver unit that is approved by NOAA's Office for Law Enforcement for use on vessels permitted to access the sanctuary.

§ 922.242 Co-management.

NOAA's Office of National Marine Sanctuaries has primary responsibility for the management of the sanctuary pursuant to the National Marine Sanctuaries Act. However, as the sanctuary includes State waters, NOAA will co-manage Papahānaumokuākea National Marine Sanctuary with the State of Hawai'i. The Office of National Marine Sanctuaries may enter into a Memorandum of Agreement with the State of Hawai'i regarding this collaboration that may address, but not be limited to, sanctuary resource protection, educational programs, permitting, research activities, development, and threats to sanctuary resources.

§ 922.243 Access.

(a) Access to the Sanctuary is prohibited and thus unlawful except:

(1) When conducting emergency response actions, law enforcement activities, and activities and exercises of the Armed Forces in accordance with § 922.244(b) and (c);

(2) Pursuant to a permit issued under § 922.245;

(3) When conducting non-commercial fishing activities in the OSZ authorized under the Magnuson-Stevens Fishery Conservation and Management Act provided that no sale of harvested fish occurs;

(4) When conducting passage without interruption in accordance with paragraphs (b), (c), and (d) of this section.

(b) A vessel may pass without interruption through the sanctuary without requiring a permit as long as the vessel does not stop, anchor, or engage in the prohibited activities listed in § 922.244 within the sanctuary;

(c) When conducting passage without interruption vessel discharges are limited to the following:

(1) Vessel engine cooling water, weather deck runoff, and vessel engine exhaust within Special Preservation Areas or the Midway Atoll Special Management Area;

(2) Discharge incidental to vessel operations such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust in areas other than Special Preservation Areas or the Midway Atoll Special Management Area.

(d) For areas of the sanctuary that are contained within the reporting area surrounding the PSSA designated by the International Maritime Organization (IMO), a ship reporting system (CORAL SHIPREP) specified below shall be in effect. The coordinates for the Reporting Area are listed in appendix E to this subpart.

(1) The ship reporting system as specified in paragraphs (d)(3) through (7) of this section does not apply to the following vessels:

(i) Vessels conducting emergency response actions, law enforcement activities, and activities and exercises of the Armed Forces in accordance with § 922.244(b) and (c);

(ii) Vessels conducting activities pursuant to a permit issued under § 922.245;

(iii) Vessels conducting non-commercial fishing activities in the OSZ authorized under the Magnuson-Stevens Fishery Conservation and Management Act; and

(iv) Vessels entitled to sovereign immunity in accordance with generally recognized principles of international law.

(2) The following vessels, passing through the reporting area of the sanctuary without interruption must participate in the ship reporting system as specified in paragraphs (d)(3) through (7) of this section:

(i) Vessels of the United States of any size;

(ii) All other ships 300 gross tonnage or greater that are entering or departing a United States port or place; and

(iv) All other ships of any size entering or departing a United States port or place and experiencing an emergency while transiting through the reporting area.

(3) All vessels passing through the reporting area of the sanctuary without interruption other than those described in paragraph (d)(2) of this section are encouraged to participate in the ship reporting system set forth in paragraphs (d)(3) through (7) of this section.

(4) Immediately upon entering the reporting area, vessels described in paragraph (d)(2) of this section must provide the following information by email sent to *nwhi.notifications@noaa.gov* in the IMO standard reporting format and data syntax shown in appendix F to this subpart:

(i) Vessel name, call sign or ship station identity, flag, and IMO identification number if applicable, and either Federal documentation or State registration number if applicable;

(ii) Date, time (UTC) and month of entry;

(iii) Position;

(iv) True course;

(v) Speed in knots and tenths;

(vi) Destination and estimated time of arrival;

(vii) Intended route through the reporting area;

(viii) Vessel draft (in meters);

(ix) Categories of hazardous cargoes on board;

(x) Any vessel defects or deficiencies that restrict maneuverability or impair normal navigation;

(xi) Any pollution incident or goods lost overboard within the PSSA, the reporting area, or the U.S. EEZ;

(xii) Contact information for the vessel's agent or owner;

(xiii) Vessel size (length overall, gross tonnage) and type;

(xiv) Total number of persons on board;

(5) Immediately upon leaving the reporting area, vessels described in paragraph (d)(2) of this section must provide the following information by email sent to *nwhi.notifications@noaa.gov* in the IMO standard reporting format and data syntax shown in appendix F to this subpart:

(i) Vessel name, call sign or ship station identity, flag, and IMO identification number if applicable, and either Federal documentation or State registration number if applicable;

(ii) Date, time (UTC), and month of exit;

(iii) Position; and

(iv) Any pollution incident or goods lost overboard within the PSSA, the reporting area, or the U.S. EEZ.

(6) For vessels that are not equipped with on-board email capability, advanced notice of entrance (as outlined in paragraph (d)(4) of this section) shall be provided at least 72 hours, but not more than one month, prior to entering the reporting area. Notification of departure (as outlined in paragraph (d)(5) of this section) must be provided within 12 hours of leaving. Notification under this paragraph may be made by email, telephone, or fax, by contacting:

(i) *Email: nwhi.notifications@noaa.gov;*

(ii) *Telephone:* 1–808–395–6944 or 1–866–478–6944; or

(iii) *Fax:* 1–808–455–3093

(7) Further reports shall be made by the vessels described in paragraph (d)(2) of this section, and are encouraged for the vessels described in paragraph (d)(3) of this section, whenever there is a change in navigation status or circumstances, particularly in relation to the intended route, defects or deficiencies.

§ 922.244 Prohibited or otherwise regulated activities.

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the sanctuary, except as specified in paragraphs (b) through (f) of this section:

(1) Exploring for, developing, or producing oil, gas, or minerals, or any energy development activities;

(2) Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a sanctuary resource;

(3) Introducing or otherwise releasing an introduced species from within or into the sanctuary;

(4) Deserting a vessel;

(5) Commercial fishing and possessing commercial fishing gear except when stowed and not available for immediate use;

(6) Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope;

(7) Non-commercial fishing and possessing non-commercial fishing gear except when stowed and not available for immediate use;

(8) Drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;

(9) Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving sanctuary resource;

(10) Attracting any living sanctuary resource;

(11) Touching coral, living or dead;

(12) Swimming, snorkeling, or closed or open circuit SCUBA diving;

(13) Discharging or depositing any material or other matter into the sanctuary, or discharging or depositing any material or other matter outside of the sanctuary that subsequently enters the sanctuary and injures or has the potential to injure any resources of the sanctuary, except as described at § 922.243 for vessel passage without interruption; and

(14) Anchoring a vessel.

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.

(c) The prohibitions in paragraph (a) of this section do not apply to activities and exercises of the U.S. Armed Forces (including those carried out by the U.S. Coast Guard). This includes the U.S. Armed Forces' response to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution. All activities and exercises of the U.S. Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on sanctuary resources and qualities. These regulations shall not limit or otherwise affect the U.S. Armed Forces discretion to use, maintain, improve, manage, or control any property under their administrative control or otherwise limit the availability of such property for military mission purposes, including, but not limited to, defensive areas and airspace reservations.

(d) The prohibitions in paragraphs (a)(7) through (14) of this section do not apply to non-commercial fishing activities in the OSZ authorized under the Magnuson-Stevens Fishery Conservation and Management Act provided that no sale of harvested fish occurs.

(e) The prohibitions in paragraphs (a)(7) through (14) of this section, do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a sanctuary general permit, or special use permit issued pursuant to subpart D of this part. In no event, may the Director issue a National Marine Sanctuary general permit or special use permit authorizing or otherwise approving activities listed in paragraph (a)(8) of this section for anything other than scientific instruments, when the activity occurs within the OSZ.

(f) The prohibitions in paragraph (a) of this section shall not restrict scientific exploration or research activities by or for the Secretary of Commerce or the Secretary of the Interior when the activity occurs within the OSZ.

§ 922.245 Permit procedures and criteria.

(a) A person may conduct an activity otherwise prohibited by § 922.244(a)(7) through (14), if such activity is conducted in accordance with the scope, purpose, terms, and conditions of, a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the NOAA Inouye Regional Center, Office of National Marine Sanctuaries; ATT: Permit Coordinator,

Papahānaumokuākea, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

(c) The Secretary may authorize sustenance fishing outside of any Special Preservation Area as a term or condition of any general permit or special use permit issued under this section and subpart D of this part. Sustenance fishing in the Midway Atoll Special Management Area shall not be allowed unless the activity has been determined by the Director of the U.S. Fish and Wildlife Service or their designee to be compatible with the purposes for which the Midway Atoll National Wildlife Refuge was established. Sustenance fishing must be conducted in a manner compatible with this part, including considering the extent to which the conduct of the activity may diminish Sanctuary resources, qualities, and ecological integrity, as well as any indirect, secondary, or cumulative effects of the activity and the duration of such effects. The Secretary will develop procedures for systematic reporting of sustenance fishing.

(d) An owner or operator of a vessel that has been issued a general permit or special use permit under this section and subpart D of this part must ensure that such vessel has a NOAA OLE type-approved VMS on board when operating within the sanctuary. OLE has authority over the type of VMS used and the installation and operation of the VMS unit. OLE may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by OLE. The owner or operator of a vessel must coordinate with OLE to install and activate an approved VMS prior to departure.

(1) When a vessel's VMS is not operating properly at sea, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by OLE that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to:

(i) Manually communicating a vessel's location as directed by OLE; or

(ii) Returning to port until the VMS is operable.

(2) The following activities regarding VMS are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(i) Operating any vessel within the sanctuary without an OLE type approved VMS;

(ii) Failing to install, activate, repair, or replace a VMS prior to leaving port;

(iii) Failing to operate and maintain a VMS on board the vessel at all times;

(iv) Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS, or VMS signal;

(v) Failing to contact OLE or follow OLE instructions when automatic position reporting has been interrupted;

(vi) Registering a VMS to more than one vessel at the same time;

(vii) Connecting or leaving connected additional equipment to a VMS unit without the prior approval of OLE; and

(viii) Making a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or communication service provider.

(3) As a condition of authorized access to the sanctuary, a vessel owner or operator subject to the requirements for a VMS in this section must allow OLE, the U.S. Coast Guard, and their authorized officers and designees access to the vessel's position data obtained from the VMS. Consistent with other applicable laws, including the limitations on access to, and use of, VMS data collected under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce and the Secretary of the Interior may have access to, and use of, collected data for scientific, statistical, and management purposes.

Appendix A to Subpart W of Part 922—Papahānaumokuākea National Marine Sanctuary Boundary Description and Coordinates

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

Point No.	Longitude	Latitude
1	180.00000	25.38976
2	179.99985	25.38982
3	179.96681	25.40451
4	179.93392	25.41950
5	179.90119	25.43478
6	179.86863	25.45034
7	179.83622	25.46619
8	179.78793	25.49050
9	179.75595	25.50707
10	179.72415	25.52391
11	179.69252	25.54104
12	179.66108	25.55844
13	179.62981	25.57612
14	179.59874	25.59408
15	179.56786	25.61231
16	179.53716	25.63081
17	179.50667	25.64959
18	179.47637	25.66863
19	179.44627	25.68794
20	179.41638	25.70751
21	179.38670	25.72735
22	179.35722	25.74745
23	179.32796	25.76781
24	179.28448	25.79883
25	179.25576	25.81983
26	179.22255	25.84463
27	179.18175	25.87583
28	179.15383	25.89770
29	179.12613	25.91982
30	179.09868	25.94218
31	179.07146	25.96479
32	179.03108	25.99915
33	179.00447	26.02235
34	178.97810	26.04578
35	178.93902	26.08137
36	178.91329	26.10537
37	178.88781	26.12961
38	178.86259	26.15407
39	178.82525	26.19117
40	178.80068	26.21618
41	178.77639	26.24141
42	178.75236	26.26685
43	178.71683	26.30540
44	178.69349	26.33136
45	178.65901	26.37068
46	178.63637	26.39715
47	178.61378	26.42409
48	178.59171	26.45096
49	178.56993	26.47801
50	178.54844	26.50526
51	178.52725	26.53270
52	178.49601	26.57420
53	178.46544	26.61611
54	178.44544	26.64427
55	178.41601	26.68685
56	178.39677	26.71544
57	178.37784	26.74421
58	178.35922	26.77314
59	178.34092	26.80223
60	178.30653	26.85803
61	178.28885	26.88744
62	178.26294	26.93185
63	178.24606	26.96164
64	178.22951	26.99158
65	178.21329	27.02166
66	178.19632	27.05394
67	178.17402	27.09774
68	178.15895	27.12831
69	178.14422	27.15901
70	178.12274	27.20529
71	178.10884	27.23631
72	178.08864	27.28305
73	178.06920	27.33006
74	178.05667	27.36154
75	178.03853	27.40896
76	178.02687	27.44071
77	178.01003	27.48851
78	177.99924	27.52051
79	177.98881	27.55259
80	177.97873	27.58477
81	177.96901	27.61703
82	177.95509	27.66559
83	177.94198	27.71432
84	177.93368	27.74690
85	177.92568	27.77984
86	177.91811	27.81256
87	177.90744	27.86176
88	177.90079	27.89464
89	177.89149	27.94406
90	177.88574	27.97707
91	177.88037	28.01014
92	177.87300	28.05982
93	177.86647	28.10959
94	177.86258	28.14281
95	177.85744	28.19271
96	177.85447	28.22601

Point No.	Longitude	Latitude
97	177.85073	28.27600
98	177.84871	28.30936
99	177.84706	28.34273
100	177.84529	28.39281
101	177.84436	28.44291
102	177.84422	28.47631
103	177.84445	28.50971
104	177.84551	28.55981
105	177.84670	28.59348
106	177.84844	28.63098
107	177.85148	28.68101
108	177.85399	28.71434
109	177.85761	28.75561
110	177.86197	28.79830
111	177.86786	28.84813
112	177.87226	28.88131
113	177.87543	28.90360
114	177.87967	28.93173
115	177.88514	28.96554
116	177.89133	29.00123
117	177.90063	29.05066
118	177.90735	29.08379
119	177.91806	29.13300
120	177.92567	29.16572
121	177.93780	29.21468
122	177.94636	29.24722
123	177.95989	29.29590
124	177.96959	29.32896
125	177.97946	29.36122
126	177.98970	29.39340
127	178.00575	29.44148
128	178.01692	29.47341
129	178.03438	29.52113
130	178.04647	29.55280
131	178.06531	29.60012
132	178.08497	29.64717
133	178.09853	29.67840
134	178.11268	29.71000
135	178.13426	29.75642
136	178.15665	29.80255
137	178.17203	29.83313
138	178.19577	29.87875
139	178.21216	29.90921
140	178.22879	29.93930
141	178.25439	29.98416
142	178.27525	30.01949
143	178.29311	30.04905
144	178.31861	30.09001
145	178.34009	30.12350
146	178.35931	30.15271
147	178.38857	30.19588
148	178.41018	30.22681
149	178.43934	30.26737
150	178.47063	30.30946
151	178.49239	30.33792
152	178.51400	30.36556
153	178.54703	30.40666
154	178.57973	30.44608
155	178.60482	30.47552
156	178.62805	30.50216
157	178.65341	30.53061
158	178.68811	30.56854
159	178.71589	30.59815
160	178.75298	30.63662
161	178.77809	30.66199
162	178.80351	30.68713
163	178.84220	30.72443
164	178.88157	30.76121
165	178.90818	30.78543
166	178.94864	30.82133
167	178.97598	30.84496
168	179.00360	30.86835
169	179.04556	30.90297
170	179.07393	30.92578
171	179.11693	30.95947
172	179.14594	30.98161
173	179.18995	31.01433
174	179.21963	31.03582
175	179.26463	31.06757
176	179.29516	31.08855
177	179.34112	31.11928
178	179.38763	31.14941
179	179.41894	31.16915
180	179.45050	31.18861
181	179.49827	31.21728
182	179.54657	31.24532
183	179.57905	31.26365
184	179.61792	31.28512
185	179.65085	31.30287
186	179.70065	31.32895
187	179.73411	31.34598
188	179.77707	31.36728
189	179.81095	31.38371
190	179.86214	31.40779
191	179.89652	31.42346
192	179.94844	31.44640
193	179.98329	31.46131
194	−180.00000	31.46823
195	−179.96410	31.48309
196	−179.92880	31.49722
197	−179.89333	31.51105
198	−179.83980	31.53119
199	−179.78591	31.55062
200	−179.74978	31.56318
201	−179.71350	31.57542
202	−179.65880	31.59317
203	−179.62215	31.60460
204	−179.56692	31.62114
205	−179.51138	31.63695
206	−179.47371	31.64721
207	−179.41770	31.66179
208	−179.38021	31.67109
209	−179.33210	31.68252
210	−179.28243	31.69383
211	−179.23675	31.70369
212	−179.19878	31.71149
213	−179.16071	31.71896
214	−179.10344	31.72953
215	−179.06516	31.73615
216	−179.00758	31.74546
217	−178.94983	31.75399
218	−178.90738	31.75980
219	−178.86874	31.76473
220	−178.82975	31.76934
221	−178.79099	31.77358
222	−178.75218	31.77748
223	−178.71332	31.78104
224	−178.67441	31.78425
225	−178.63547	31.78712
226	−178.59650	31.78964
227	−178.55749	31.79182
228	−178.51846	31.79366
229	−178.47941	31.79515
230	−178.43412	31.79649
231	−178.39504	31.79729
232	−178.35596	31.79775
233	−178.32396	31.79786
234	−178.28487	31.79769
235	−178.24553	31.79717
236	−178.20645	31.79631
237	−178.16738	31.79510
238	−178.12834	31.79354
239	−178.08931	31.79165
240	−178.05031	31.78940
241	−178.01134	31.78682
242	−177.97241	31.78389
243	−177.93351	31.78061
244	−177.89466	31.77699
245	−177.85585	31.77303
246	−177.81646	31.76865
247	−177.77776	31.76401
248	−177.73912	31.75902
249	−177.70055	31.75369
250	−177.66205	31.74802
251	−177.62362	31.74202
252	−177.58526	31.73567
253	−177.54140	31.72800
254	−177.50321	31.72097
255	−177.46512	31.71361
256	−177.42712	31.70592
257	−177.38921	31.69789
258	−177.35141	31.68952
259	−177.31372	31.68082
260	−177.27613	31.67179
261	−177.23866	31.66242
262	−177.20131	31.65273
263	−177.16094	31.64185
264	−177.12384	31.63149
265	−177.08687	31.62082
266	−177.04995	31.60978
267	−176.99406	31.60543
268	−176.95227	31.60174
269	−176.91352	31.59795
270	−176.87481	31.59382
271	−176.83616	31.58934
272	−176.79756	31.58453
273	−176.73979	31.57666
274	−176.70136	31.57100
275	−176.66300	31.56499
276	−176.60561	31.55534
277	−176.56718	31.54844
278	−176.52911	31.54125
279	−176.49114	31.53372
280	−176.45325	31.52586
281	−176.41282	31.51708
282	−176.37095	31.50759
283	−176.33338	31.49873
284	−176.29414	31.48910
285	−176.23818	31.47469
286	−176.20102	31.46467
287	−176.14552	31.44902
288	−176.10869	31.43818
289	−176.07199	31.42701
290	−176.03543	31.41553
291	−175.99902	31.40371
292	−175.94468	31.38539
293	−175.90865	31.37278
294	−175.87278	31.35985
295	−175.83644	31.34637
296	−175.80089	31.33281
297	−175.76551	31.31893
298	−175.72777	31.30370
299	−175.67361	31.30264
300	−175.62462	31.30118
301	−175.58577	31.29962
302	−175.56300	31.29856
303	−175.50480	31.29533
304	−175.44667	31.29132
305	−175.38862	31.28654
306	−175.33066	31.28099
307	−175.27281	31.27467
308	−175.21509	31.26757
309	−175.15433	31.25928
310	−175.10019	31.25117
311	−175.05021	31.24316
312	−174.99307	31.23327
313	−174.93613	31.22261
314	−174.87938	31.21120
315	−174.82112	31.19865
316	−174.78357	31.19012
317	−174.74612	31.18126
318	−174.69017	31.16735

Point No.	Longitude	Latitude
319	−174.65301	31.15766
320	−174.61598	31.14764
321	−174.57907	31.13730
322	−174.54229	31.12663
323	−174.48737	31.11001
324	−174.43277	31.09266
325	−174.39656	31.08069
326	−174.36049	31.06840
327	−174.32457	31.05579
328	−174.28881	31.04287
329	−174.25322	31.02962
330	−174.21779	31.01607
331	−174.16782	30.99630
332	−174.12317	30.97807
333	−174.08834	30.96342
334	−174.03646	30.94087
335	−174.00210	30.92545
336	−173.95092	30.90176
337	−173.91394	30.88410
338	−173.88027	30.86763
339	−173.83015	30.84236
340	−173.79699	30.82515
341	−173.74828	30.79912
342	−173.71286	30.77965
343	−173.67333	30.75735
344	−173.63202	30.73339
345	−173.60020	30.71444
346	−173.56860	30.69522
347	−173.52165	30.66586
348	−173.49065	30.64594
349	−173.45306	30.62120
350	−173.40817	30.59091
351	−173.37804	30.57004
352	−173.34479	30.54651
353	−173.30046	30.51431
354	−173.25673	30.48153
355	−173.22791	30.45935
356	−173.19936	30.43692
357	−173.15960	30.40490
358	−173.12000	30.37227
359	−173.09242	30.34897
360	−173.06512	30.32542
361	−173.02470	30.28965
362	−172.98494	30.25335
363	−172.95880	30.22886
364	−172.93295	30.20413
365	−172.89474	30.16662
366	−172.85721	30.12860
367	−172.83096	30.10131
368	−172.79458	30.06247
369	−172.77072	30.03631
370	−172.74717	30.00995
371	−172.71244	29.97001
372	−172.67843	29.92961
373	−172.65616	29.90243
374	−172.62336	29.86129
375	−172.60190	29.83362
376	−172.57892	29.80334
377	−172.55812	29.77530
378	−172.52756	29.73290
379	−172.50760	29.70441
380	−172.48798	29.67574
381	−172.46870	29.64690
382	−172.44976	29.61789
383	−172.42200	29.57406
384	−172.40392	29.54464
385	−172.37746	29.50021
386	−172.35178	29.45544
387	−172.33510	29.42540
388	−172.31074	29.38007
389	−172.29495	29.34967
390	−172.27193	29.30382
391	−172.25703	29.27308
392	−172.23535	29.22673
393	−172.22135	29.19567
394	−172.20103	29.14885
395	−172.18794	29.11749
396	−172.18269	29.10461
397	−172.14425	29.10857
398	−172.10644	29.11211
399	−172.06858	29.11531
400	−172.01172	29.11947
401	−171.95480	29.12286
402	−171.91682	29.12469
403	−171.87882	29.12618
404	−171.82179	29.12776
405	−171.78376	29.12839
406	−171.73360	29.12869
407	−171.67655	29.12830
408	−171.63852	29.12761
409	−171.60049	29.12658
410	−171.54349	29.12439
411	−171.50552	29.12249
412	−171.45928	29.11977
413	−171.42136	29.11719
414	−171.38347	29.11427
415	−171.32671	29.10925
416	−171.28892	29.10547
417	−171.25118	29.10135
418	−171.21350	29.09689
419	−171.17551	29.09204
420	−171.13794	29.08690
421	−171.10043	29.08142
422	−171.04430	29.07256
423	−171.00697	29.06623
424	−170.96972	29.05956
425	−170.93255	29.05256
426	−170.89547	29.04522
427	−170.85848	29.03755
428	−170.82159	29.02954
429	−170.78479	29.02120
430	−170.74809	29.01253
431	−170.69325	28.99890
432	−170.65683	28.98940
433	−170.60242	28.97453
434	−170.56630	28.96421
435	−170.53030	28.95356
436	−170.49444	28.94259
437	−170.44089	28.92552
438	−170.40537	28.91374
439	−170.36999	28.90164
440	−170.33476	28.88922
441	−170.29968	28.87648
442	−170.24735	28.85678
443	−170.21266	28.84325
444	−170.16441	28.82380
445	−170.11868	28.81843
446	−170.06241	28.81110
447	−170.00627	28.80301
448	−169.95029	28.79415
449	−169.89448	28.78454
450	−169.85736	28.77770
451	−169.80186	28.76683
452	−169.74655	28.75519
453	−169.69147	28.74281
454	−169.63661	28.72968
455	−169.60017	28.72051
456	−169.54573	28.70614
457	−169.49155	28.69103
458	−169.45559	28.68055
459	−169.40188	28.66422
460	−169.34847	28.64716
461	−169.29538	28.62937
462	−169.24262	28.61087
463	−169.19019	28.59165
464	−169.13811	28.57172
465	−169.08640	28.55108
466	−169.03506	28.52974
467	−169.00106	28.51513
468	−168.95037	28.49263
469	−168.90010	28.46945
470	−168.85025	28.44559
471	−168.81726	28.42931
472	−168.76813	28.40432
473	−168.71946	28.37867
474	−168.67125	28.35237
475	−168.62352	28.32541
476	−168.58344	28.30203
477	−168.53902	28.30813
478	−168.48296	28.31510
479	−168.42677	28.32131
480	−168.37049	28.32675
481	−168.33291	28.32995
482	−168.27648	28.33411
483	−168.21998	28.33750
484	−168.16342	28.34011
485	−168.10683	28.34195
486	−168.05021	28.34302
487	−168.00043	28.34332
488	−167.94380	28.34293
489	−167.88718	28.34177
490	−167.83059	28.33983
491	−167.77404	28.33713
492	−167.73621	28.33488
493	−167.67976	28.33089
494	−167.62339	28.32613
495	−167.56712	28.32059
496	−167.51095	28.31429
497	−167.45490	28.30722
498	−167.39898	28.29939
499	−167.34321	28.29079
500	−167.30612	28.28464
501	−167.25063	28.27477
502	−167.21374	28.26778
503	−167.15856	28.25665
504	−167.10359	28.24478
505	−167.04884	28.23215
506	−166.99432	28.21878
507	−166.94004	28.20466
508	−166.88603	28.18981
509	−166.85017	28.17950
510	−166.81444	28.16886
511	−166.79269	28.16220
512	−166.76001	28.15196
513	−166.72461	28.14051
514	−166.68934	28.12874
515	−166.65422	28.11665
516	−166.61924	28.10424
517	−166.58441	28.09152
518	−166.54974	28.07847
519	−166.51522	28.06511
520	−166.48086	28.05144
521	−166.42964	28.03034
522	−166.39570	28.01589
523	−166.36193	28.00113
524	−166.31162	27.97842
525	−166.27830	27.96290
526	−166.24517	27.94707
527	−166.21223	27.93095
528	−166.17948	27.91452
529	−166.14693	27.89780
530	−166.11458	27.88078
531	−166.06622	27.85459
532	−166.03438	27.83684
533	−166.00275	27.81881
534	−165.97134	27.80048
535	−165.94014	27.78187
536	−165.90917	27.76298
537	−165.87842	27.74381
538	−165.83251	27.71439
539	−165.80234	27.69452
540	−165.77240	27.67438

Point No.	Longitude	Latitude
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543	−165.68375	27.61215
544	−165.65478	27.59094
545	−165.62607	27.56946
546	−165.59760	27.54773
547	−165.56939	27.52573
548	−165.54144	27.50348
549	−165.50001	27.46963
550	−165.47272	27.44675
551	−165.44570	27.42363
552	−165.41895	27.40026
553	−165.39248	27.37664
554	−165.36628	27.35279
555	−165.34036	27.32870
556	−165.30201	27.29213
557	−165.27680	27.26746
558	−165.25188	27.24256
559	−165.21504	27.20478
560	−165.19085	27.17932
561	−165.16695	27.15365
562	−165.14335	27.12775
563	−165.12006	27.10164
564	−165.09707	27.07533
565	−165.07732	27.05226
566	−165.03132	27.03829
567	−164.99614	27.02718
568	−164.96109	27.01574
569	−164.90877	26.99799
570	−164.85677	26.97951
571	−164.82201	26.96670
572	−164.70700	26.92271
573	−164.68299	26.92268
574	−164.64572	26.92233
575	−164.58983	26.92117
576	−164.55259	26.91997
577	−164.51536	26.91843
578	−164.45955	26.91547
579	−164.40380	26.91174
580	−164.34813	26.90724
581	−164.29254	26.90197
582	−164.25554	26.89803
583	−164.21858	26.89375
584	−164.16325	26.88669
585	−164.10804	26.87887
586	−164.05299	26.87029
587	−164.01637	26.86414
588	−163.97983	26.85766
589	−163.92516	26.84731
590	−163.87068	26.83620
591	−163.81641	26.82434
592	−163.78034	26.81602
593	−163.74438	26.80737
594	−163.69063	26.79377
595	−163.63712	26.77943
596	−163.58387	26.76435
597	−163.54853	26.75389
598	−163.51331	26.74310
599	−163.46071	26.72632
600	−163.40842	26.70881
601	−163.35645	26.69058
602	−163.30480	26.67164
603	−163.27056	26.65861
604	−163.21948	26.63848
605	−163.16876	26.61765
606	−163.13516	26.60337
607	−163.08506	26.58138
608	−163.03536	26.55870
609	−163.00000	26.54202
610	−163.00000	24.11409
611	−161.74242	23.88042
612	−161.68679	23.86839
613	−161.63210	23.85316
614	−161.57857	23.83478
615	−161.52642	23.81332
616	−161.47586	23.78888
617	−161.42708	23.76155
618	−161.38029	23.73144
619	−161.33566	23.69868
620	−161.29337	23.66338
621	−161.25360	23.62570
622	−161.21650	23.58578
623	−161.18221	23.54379
624	−161.15087	23.49989
625	−161.12260	23.45425
626	−161.09751	23.40707
627	−161.07569	23.35851
628	−161.05724	23.30879
629	−161.04221	23.25809
630	−161.03067	23.20662
631	−161.02266	23.15458
632	−161.01820	23.10217
633	−161.01730	23.04961
634	−161.01998	22.99711
635	−161.02620	22.94485
636	−161.03595	22.89307
637	−161.04919	22.84195
638	−161.06584	22.79170
639	−161.08586	22.74252
640	−161.10915	22.69460
641	−161.13562	22.64812
642	−161.16516	22.60327
643	−161.19766	22.56023
644	−161.23298	22.51916
645	−161.27099	22.48022
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647	−161.35444	22.40934
648	−161.39956	22.37767
649	−161.44671	22.34869
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651	−161.54635	22.29922
652	−161.59846	22.27892
653	−161.65181	22.26168
654	−161.70621	22.24758
655	−161.76145	22.23667
656	−161.81730	22.22899
657	−161.87356	22.22458
658	−161.93000	22.22343
659	−161.98641	22.22557
660	−162.04257	22.23099
661	−162.09826	22.23966
662	−163.00000	22.40727
663	−163.00000	19.23458
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665	−163.05474	19.28472
666	−163.07971	19.30831
667	−163.10443	19.33213
668	−163.12891	19.35619
669	−163.15314	19.38047
670	−163.18902	19.41731
671	−163.21262	19.44214
672	−163.23597	19.46720
673	−163.25906	19.49248
674	−163.28189	19.51796
675	−163.31564	19.55659
676	−163.33781	19.58261
677	−163.35971	19.60883
678	−163.38134	19.63525
679	−163.41328	19.67526
680	−163.43423	19.70218
681	−163.45490	19.72929
682	−163.47678	19.75859
683	−163.49689	19.78608
684	−163.51671	19.81376
685	−163.54591	19.85562
686	−163.56501	19.88376
687	−163.58383	19.91207
688	−163.60235	19.94056
689	−163.62957	19.98361
690	−163.64735	20.01252
691	−163.66483	20.04159
692	−163.68201	20.07083
693	−163.69888	20.10022
694	−163.71545	20.12977
695	−163.73841	20.17192
696	−163.75664	20.18197
697	−163.78708	20.19906
698	−163.81734	20.21644
699	−163.84743	20.23409
700	−163.87734	20.25202
701	−163.90706	20.27022
702	−163.93659	20.28870
703	−163.95588	20.30099
704	−163.98535	20.29532
705	−164.02014	20.28893
706	−164.07244	20.27996
707	−164.12487	20.27171
708	−164.17742	20.26419
709	−164.23008	20.25739
710	−164.28284	20.25133
711	−164.33569	20.24599
712	−164.38861	20.24139
713	−164.44159	20.23752
714	−164.49463	20.23438
715	−164.54771	20.23197
716	−164.58106	20.23084
717	−164.60571	20.23016
718	−164.65884	20.22922
719	−164.71217	20.22902
720	−164.74760	20.22929
721	−164.78302	20.22990
722	−164.83614	20.23141
723	−164.88922	20.23366
724	−164.92459	20.23557
725	−164.97761	20.23904
726	−165.01292	20.24176
727	−165.04914	20.24489
728	−165.10201	20.25007
729	−165.13720	20.25393
730	−165.18992	20.26033
731	−165.24253	20.26745
732	−165.27754	20.27261
733	−165.31250	20.27808
734	−165.36483	20.28690
735	−165.41702	20.29644
736	−165.45173	20.30321
737	−165.50401	20.31402
738	−165.54798	20.32372
739	−165.60124	20.31609
740	−165.65391	20.30930
741	−165.70669	20.30323
742	−165.75955	20.29790
743	−165.81249	20.29329
744	−165.86549	20.28942
745	−165.91855	20.28628
746	−165.97164	20.28388
747	−166.02477	20.28221
748	−166.07792	20.28127
749	−166.13108	20.28107
750	−166.18423	20.28161
751	−166.23737	20.28287
752	−166.29049	20.28488
753	−166.34357	20.28762
754	−166.36478	20.28892
755	−166.39682	20.29110
756	−166.43214	20.29382
757	−166.48507	20.29852
758	−166.52032	20.30205
759	−166.57311	20.30796
760	−166.61798	20.31350
761	−166.65308	20.31816
762	−166.70563	20.32577

Point No.	Longitude	Latitude
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765	−166.82777	20.34635
766	−166.87988	20.35637
767	−166.91453	20.36345
768	−166.94911	20.37085
769	−166.99267	20.38061
770	−167.02709	20.38865
771	−167.07857	20.40130
772	−167.11278	20.41012
773	−167.14689	20.41926
774	−167.19433	20.43226
775	−167.22830	20.44187
776	−167.26218	20.45180
777	−167.29596	20.46203
778	−167.32963	20.47258
779	−167.36319	20.48344
780	−167.39664	20.49460
781	−167.44659	20.51193
782	−167.47975	20.52386
783	−167.51278	20.53610
784	−167.54695	20.54912
785	−167.57973	20.56197
786	−167.61238	20.57511
787	−167.64489	20.58856
788	−167.67726	20.60230
789	−167.70949	20.61635
790	−167.74158	20.63068
791	−167.77351	20.64532
792	−167.80530	20.66024
793	−167.83694	20.67546
794	−167.86841	20.69097
795	−167.91533	20.71478
796	−167.94640	20.73101
797	−167.97731	20.74752
798	−168.00804	20.76432
799	−168.03861	20.78140
800	−168.08412	20.80755
801	−168.11424	20.82533
802	−168.14417	20.84338
803	−168.17392	20.86172
804	−168.20348	20.88032
805	−168.24746	20.90873
806	−168.27653	20.92801
807	−168.31977	20.95743
808	−168.36255	20.98744
809	−168.40487	21.01804
810	−168.43282	21.03877
811	−168.47433	21.07033
812	−168.50174	21.09169
813	−168.54244	21.12420
814	−168.58263	21.15727
815	−168.62230	21.19089
816	−168.66145	21.22506
817	−168.68726	21.24813
818	−168.71283	21.27145
819	−168.75073	21.30685
820	−168.77569	21.33074
821	−168.81266	21.36701
822	−168.83700	21.39147
823	−168.87302	21.42858
824	−168.90847	21.46618
825	−168.93178	21.49152
826	−168.96624	21.52992
827	−168.99177	21.55913
828	−169.02276	21.59546
829	−169.04473	21.62184
830	−169.07716	21.66178
831	−169.09844	21.68866
832	−169.12982	21.72934
833	−169.15039	21.75669
834	−169.18071	21.79808
835	−169.20232	21.82840
836	−169.21703	21.84743
837	−169.23883	21.85466
838	−169.27247	21.86611
839	−169.32272	21.88387
840	−169.37269	21.90231
841	−169.42237	21.92143
842	−169.47175	21.94123
843	−169.52083	21.96170
844	−169.56958	21.98284
845	−169.61800	22.00464
846	−169.66608	22.02710
847	−169.71382	22.05022
848	−169.76119	22.07399
849	−169.80819	22.09840
850	−169.85481	22.12345
851	−169.90103	22.14914
852	−169.94686	22.17546
853	−169.97718	22.19335
854	−170.00653	22.21103
855	−170.05123	22.20415
856	−170.08671	22.19907
857	−170.12225	22.19430
858	−170.15783	22.18987
859	−170.19345	22.18575
860	−170.22911	22.18196
861	−170.28268	22.17688
862	−170.31843	22.17390
863	−170.35421	22.17125
864	−170.39001	22.16891
865	−170.42584	22.16691
866	−170.46169	22.16523
867	−170.51548	22.16332
868	−170.55136	22.16245
869	−170.58725	22.16191
870	−170.62314	22.16170
871	−170.65929	22.16181
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873	−170.73106	22.16301
874	−170.76693	22.16410
875	−170.80279	22.16551
876	−170.83863	22.16725
877	−170.89236	22.17047
878	−170.92815	22.17302
879	−170.96391	22.17590
880	−170.99964	22.17910
881	−171.03533	22.18262
882	−171.07099	22.18647
883	−171.12440	22.19286
884	−171.15995	22.19751
885	−171.19545	22.20249
886	−171.23089	22.20780
887	−171.28396	22.21635
888	−171.33689	22.22563
889	−171.38967	22.23563
890	−171.42477	22.24269
891	−171.47727	22.25389
892	−171.52961	22.26579
893	−171.58175	22.27841
894	−171.63370	22.29174
895	−171.68543	22.30577
896	−171.73694	22.32050
897	−171.78823	22.33594
898	−171.83927	22.35207
899	−171.89005	22.36889
900	−171.94057	22.38641
901	−171.99082	22.40461
902	−172.03998	22.42318
903	−172.09233	22.42751
904	−172.12811	22.43088
905	−172.18170	22.43653
906	−172.21738	22.44070
907	−172.25302	22.44519
908	−172.28861	22.45001
909	−172.32414	22.45515
910	−172.37735	22.46346
911	−172.41274	22.46941
912	−172.46572	22.47892
913	−172.50095	22.48566
914	−172.55367	22.49638
915	−172.58872	22.50392
916	−172.64114	22.51582
917	−172.67599	22.52415
918	−172.71075	22.53279
919	−172.76272	22.54635
920	−172.79725	22.55578
921	−172.83168	22.56552
922	−172.86601	22.57558
923	−172.90023	22.58594
924	−172.95136	22.60207
925	−172.98531	22.61320
926	−173.03602	22.63048
927	−173.08645	22.64845
928	−173.11992	22.66081
929	−173.15325	22.67347
930	−173.18646	22.68643
931	−173.23601	22.70643
932	−173.26888	22.72014
933	−173.30160	22.73415
934	−173.34556	22.75354
935	−173.37723	22.74830
936	−173.41276	22.74274
937	−173.44836	22.73750
938	−173.48400	22.73258
939	−173.51970	22.72798
940	−173.55544	22.72371
941	−173.59122	22.71976
942	−173.62704	22.71613
943	−173.66290	22.71283
944	−173.69879	22.70985
945	−173.73471	22.70720
946	−173.77065	22.70487
947	−173.80661	22.70286
948	−173.84260	22.70118
949	−173.87860	22.69983
950	−173.91461	22.69880
951	−173.95063	22.69810
952	−173.98666	22.69772
953	−174.02268	22.69767
954	−174.05871	22.69794
955	−174.09473	22.69854
956	−174.13075	22.69947
957	−174.16675	22.70072
958	−174.20274	22.70229
959	−174.23871	22.70419
960	−174.27466	22.70642
961	−174.31059	22.70897
962	−174.34649	22.71185
963	−174.38235	22.71504
964	−174.41819	22.71857
965	−174.45398	22.72242
966	−174.48974	22.72659
967	−174.52545	22.73108
968	−174.56111	22.73589
969	−174.59672	22.74103
970	−174.63227	22.74649
971	−174.66777	22.75227
972	−174.70321	22.75837
973	−174.73859	22.76479
974	−174.77389	22.77153
975	−174.82672	22.78224
976	−174.86184	22.78978
977	−174.89689	22.79763
978	−174.93185	22.80580
979	−174.96673	22.81429
980	−175.00151	22.82309
981	−175.03621	22.83220
982	−175.07081	22.84163
983	−175.10531	22.85136
984	−175.13972	22.86141

Point No.	Longitude	Latitude
985	−175.17401	22.87177
986	−175.20820	22.88244
987	−175.24228	22.89342
988	−175.27624	22.90471
989	−175.31009	22.91630
990	−175.34381	22.92820
991	−175.37741	22.94040
992	−175.41089	22.95290
993	−175.44423	22.96571
994	−175.47744	22.97882
995	−175.51051	22.99222
996	−175.54345	23.00593
997	−175.57624	23.01993
998	−175.60888	23.03422
999	−175.64138	23.04881
1000	−175.67372	23.06370
1001	−175.70591	23.07887
1002	−175.73795	23.09434
1003	−175.76982	23.11009
1004	−175.81731	23.13426
1005	−175.84877	23.15073
1006	−175.88005	23.16748
1007	−175.91116	23.18451
1008	−175.94209	23.20183
1009	−175.98815	23.22832
1010	−176.01862	23.24633
1011	−176.04891	23.26461
1012	−176.09398	23.29254
1013	−176.12379	23.31150
1014	−176.15339	23.33073
1015	−176.18280	23.35022
1016	−176.21200	23.36998
1017	−176.25542	23.40011
1018	−176.28410	23.42052
1019	−176.31256	23.44119
1020	−176.35486	23.47268
1021	−176.38278	23.49399
1022	−176.41048	23.51554
1023	−176.43795	23.53735
1024	−176.46520	23.55940
1025	−176.50563	23.59294
1026	−176.53229	23.61560
1027	−176.55872	23.63850
1028	−176.59790	23.67330
1029	−176.62372	23.69679
1030	−176.66199	23.73246
1031	−176.68719	23.75653
1032	−176.71213	23.78082
1033	−176.73682	23.80534
1034	−176.76125	23.83007
1035	−176.78542	23.85503
1036	−176.80933	23.88021
1037	−176.83297	23.90559
1038	−176.85635	23.93119
1039	−176.87945	23.95700
1040	−176.90229	23.98302
1041	−176.93602	24.02243
1042	−176.96913	24.06229
1043	−176.99085	24.08911
1044	−177.01229	24.11613
1045	−177.03344	24.14334
1046	−177.06462	24.18450
1047	−177.08505	24.21218
1048	−177.10518	24.24004
1049	−177.12502	24.26808
1050	−177.14456	24.29630
1051	−177.17331	24.33895
1052	−177.19210	24.36760
1053	−177.21058	24.39642
1054	−177.22875	24.42540
1055	−177.25544	24.46918
1056	−177.27284	24.49856
1057	−177.28992	24.52810
1058	−177.30670	24.55779
1059	−177.32315	24.58763
1060	−177.33929	24.61762
1061	−177.36249	24.66210
1062	−177.38606	24.67081
1063	−177.41985	24.68359
1064	−177.45352	24.69667
1065	−177.48704	24.71005
1066	−177.53706	24.73067
1067	−177.57023	24.74479
1068	−177.60325	24.75920
1069	−177.63612	24.77391
1070	−177.66883	24.78890
1071	−177.71760	24.81194
1072	−177.74992	24.82767
1073	−177.78207	24.84367
1074	−177.81404	24.85997
1075	−177.83690	24.87185
1076	−177.88667	24.87745
1077	−177.94111	24.88429
1078	−177.97195	24.88850
1079	−177.99642	24.89200
1080	−178.05062	24.90028
1081	−178.10469	24.90929
1082	−178.14066	24.91569
1083	−178.16577	24.92034
1084	−178.21953	24.93078
1085	−178.27313	24.94194
1086	−178.32655	24.95380
1087	−178.37978	24.96637
1088	−178.43281	24.97965
1089	−178.48563	24.99363
1090	−178.53822	25.00832
1091	−178.59058	25.02370
1092	−178.61445	25.03096
1093	−178.64360	25.04005
1094	−178.67821	25.05115
1095	−178.70077	25.05859
1096	−178.72148	25.06052
1097	−178.75794	25.06420
1098	−178.81257	25.07031
1099	−178.86732	25.07718
1100	−178.90360	25.08214
1101	−178.93984	25.08742
1102	−178.98140	25.09383
1103	−179.01755	25.09959
1104	−179.07166	25.10883
1105	−179.10765	25.11539
1106	−179.14357	25.12227
1107	−179.19731	25.13318
1108	−179.25088	25.14480
1109	−179.28649	25.15295
1110	−179.32201	25.16141
1111	−179.35744	25.17018
1112	−179.38198	25.17642
1113	−179.43515	25.19048
1114	−179.47030	25.20018
1115	−179.50534	25.21020
1116	−179.55771	25.22581
1117	−179.60982	25.24211
1118	−179.66167	25.25910
1119	−179.69609	25.27081
1120	−179.73039	25.28283
1121	−179.76456	25.29514
1122	−179.79860	25.30776
1123	−179.83251	25.32068
1124	−179.86628	25.33389
1125	−179.89991	25.34741
1126	−179.93340	25.36122
1127	−179.96674	25.37533
1128	−180.00000	25.38976

Appendix B to Subpart W of Part 922—Coordinates for the Outer Sanctuary Zone

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

The boundaries for the areas listed in this appendix, unless otherwise described in this rule, begin at Point 1 as indicated in the particular area's coordinate table and continue to each successive point in numerical order until ending at the last point in the table.

Point No.	Longitude	Latitude
1	180.00000	25.38976
2	179.99985	25.38982
3	179.96681	25.40451
4	179.93392	25.41950
5	179.90119	25.43477
6	179.86863	25.45034
7	179.83622	25.46619
8	179.78793	25.49050
9	179.75595	25.50707
10	179.72415	25.52391
11	179.69252	25.54104
12	179.66108	25.55844
13	179.62981	25.57612
14	179.59874	25.59408
15	179.56786	25.61231
16	179.53716	25.63081
17	179.50667	25.64959
18	179.47637	25.66863
19	179.44627	25.68794
20	179.41638	25.70751
21	179.38670	25.72735
22	179.35722	25.74745
23	179.32796	25.76781
24	179.28448	25.79883
25	179.25576	25.81983
26	179.22255	25.84463
27	179.18175	25.87583
28	179.15383	25.89770
29	179.12613	25.91982
30	179.09868	25.94218
31	179.07146	25.96479
32	179.03108	25.99915
33	179.00447	26.02235
34	178.97810	26.04578
35	178.93902	26.08137
36	178.91329	26.10537
37	178.88781	26.12961
38	178.86259	26.15407
39	178.82525	26.19117
40	178.80068	26.21618
41	178.77639	26.24141
42	178.75236	26.26685
43	178.71684	26.30540
44	178.69349	26.33136
45	178.65901	26.37068
46	178.63637	26.39715
47	178.61378	26.42409
48	178.59171	26.45096
49	178.56993	26.47801
50	178.54844	26.50526
51	178.52724	26.53270
52	178.49600	26.57420
53	178.46544	26.61611
54	178.44544	26.64427
55	178.41601	26.68685
56	178.39677	26.71544
57	178.37784	26.74421
58	178.35922	26.77314
59	178.34092	26.80223

Point No.	Longitude	Latitude
60	178.30653	26.85803
61	178.28885	26.88744
62	178.26293	26.93184
63	178.24606	26.96164
64	178.22951	26.99158
65	178.21329	27.02166
66	178.19632	27.05394
67	178.17402	27.09775
68	178.15895	27.12831
69	178.14422	27.15901
70	178.12274	27.20530
71	178.10884	27.23631
72	178.08864	27.28305
73	178.06920	27.33006
74	178.05667	27.36154
75	178.03853	27.40896
76	178.02687	27.44071
77	178.01003	27.48851
78	177.99924	27.52051
79	177.98881	27.55259
80	177.97873	27.58477
81	177.96901	27.61703
82	177.95509	27.66559
83	177.94198	27.71432
84	177.93368	27.74690
85	177.92568	27.77984
86	177.91811	27.81256
87	177.90744	27.86176
88	177.90079	27.89464
89	177.89149	27.94406
90	177.88574	27.97707
91	177.88037	28.01014
92	177.87300	28.05982
93	177.86647	28.10958
94	177.86258	28.14281
95	177.85744	28.19271
96	177.85448	28.22601
97	177.85073	28.27601
98	177.84871	28.30936
99	177.84706	28.34273
100	177.84529	28.39281
101	177.84437	28.44291
102	177.84422	28.47631
103	177.84445	28.50971
104	177.84551	28.55981
105	177.84670	28.59348
106	177.84844	28.63098
107	177.85148	28.68101
108	177.85399	28.71434
109	177.85761	28.75561
110	177.86197	28.79830
111	177.86786	28.84813
112	177.87226	28.88131
113	177.87543	28.90359
114	177.87967	28.93174
115	177.88514	28.96554
116	177.89133	29.00123
117	177.90063	29.05066
118	177.90735	29.08379
119	177.91806	29.13300
120	177.92568	29.16572
121	177.93780	29.21468
122	177.94636	29.24723
123	177.95989	29.29590
124	177.96959	29.32896
125	177.97946	29.36123
126	177.98970	29.39340
127	178.00575	29.44148
128	178.01692	29.47341
129	178.03438	29.52113
130	178.04647	29.55280
131	178.06531	29.60012
132	178.08497	29.64717
133	178.09853	29.67840
134	178.11268	29.71000
135	178.13426	29.75642
136	178.15665	29.80255
137	178.17203	29.83313
138	178.19577	29.87875
139	178.21216	29.90921
140	178.22879	29.93930
141	178.25439	29.98416
142	178.27525	30.01949
143	178.29311	30.04905
144	178.31861	30.09002
145	178.34009	30.12350
146	178.35931	30.15271
147	178.38857	30.19588
148	178.41018	30.22681
149	178.43934	30.26737
150	178.47063	30.30946
151	178.49239	30.33792
152	178.51400	30.36556
153	178.54703	30.40666
154	178.57973	30.44608
155	178.60482	30.47552
156	178.62805	30.50217
157	178.65341	30.53062
158	178.68811	30.56854
159	178.71589	30.59815
160	178.75298	30.63662
161	178.77809	30.66199
162	178.80351	30.68714
163	178.84220	30.72443
164	178.88157	30.76121
165	178.90818	30.78543
166	178.94864	30.82133
167	178.97598	30.84496
168	179.00360	30.86835
169	179.04556	30.90298
170	179.07393	30.92578
171	179.11693	30.95947
172	179.14594	30.98161
173	179.18995	31.01433
174	179.21963	31.03582
175	179.26462	31.06757
176	179.29516	31.08855
177	179.34112	31.11929
178	179.38763	31.14941
179	179.41894	31.16915
180	179.45050	31.18861
181	179.49827	31.21728
182	179.54657	31.24532
183	179.57905	31.26365
184	179.61792	31.28512
185	179.65085	31.30287
186	179.70065	31.32895
187	179.73411	31.34597
188	179.77707	31.36728
189	179.81095	31.38371
190	179.86214	31.40779
191	179.89652	31.42346
192	179.94844	31.44640
193	179.98329	31.46131
194	−180.00000	31.46823
195	−179.96410	31.48309
196	−179.92880	31.49723
197	−179.89333	31.51105
198	−179.83980	31.53119
199	−179.78591	31.55062
200	−179.74978	31.56318
201	−179.71350	31.57542
202	−179.65880	31.59317
203	−179.62215	31.60460
204	−179.56691	31.62114
205	−179.51138	31.63695
206	−179.47371	31.64721
207	−179.41770	31.66178
208	−179.38021	31.67109
209	−179.33210	31.68252
210	−179.28243	31.69383
211	−179.23675	31.70369
212	−179.19878	31.71149
213	−179.16071	31.71896
214	−179.10344	31.72953
215	−179.06516	31.73615
216	−179.00758	31.74546
217	−178.94983	31.75399
218	−178.90738	31.75980
219	−178.86874	31.76473
220	−178.82975	31.76934
221	−178.79099	31.77358
222	−178.75218	31.77748
223	−178.71331	31.78104
224	−178.67441	31.78425
225	−178.63547	31.78712
226	−178.59650	31.78964
227	−178.55749	31.79182
228	−178.51846	31.79366
229	−178.47941	31.79515
230	−178.43412	31.79649
231	−178.39504	31.79729
232	−178.35596	31.79775
233	−178.32396	31.79786
234	−178.28487	31.79769
235	−178.24552	31.79717
236	−178.20645	31.79631
237	−178.16738	31.79510
238	−178.12834	31.79355
239	−178.08931	31.79165
240	−178.05031	31.78940
241	−178.01134	31.78682
242	−177.97241	31.78389
243	−177.93351	31.78061
244	−177.89466	31.77699
245	−177.85585	31.77303
246	−177.81646	31.76865
247	−177.77776	31.76401
248	−177.73912	31.75902
249	−177.70055	31.75369
250	−177.66205	31.74802
251	−177.62362	31.74202
252	−177.58526	31.73567
253	−177.54140	31.72800
254	−177.50321	31.72097
255	−177.46512	31.71361
256	−177.42712	31.70592
257	−177.38921	31.69788
258	−177.35141	31.68952
259	−177.31372	31.68082
260	−177.27613	31.67179
261	−177.23866	31.66242
262	−177.20131	31.65273
263	−177.16094	31.64185
264	−177.12384	31.63150
265	−177.08687	31.62082
266	−177.04995	31.60978
267	−176.99406	31.60543
268	−176.95227	31.60174
269	−176.91351	31.59795
270	−176.87481	31.59382
271	−176.83616	31.58934
272	−176.79756	31.58453
273	−176.73979	31.57666
274	−176.70136	31.57100
275	−176.66300	31.56499
276	−176.60561	31.55534
277	−176.56718	31.54844
278	−176.52911	31.54125
279	−176.49114	31.53372
280	−176.45325	31.52586
281	−176.41282	31.51708

Point No.	Longitude	Latitude
282	−176.37095	31.50759
283	−176.33338	31.49873
284	−176.29414	31.48910
285	−176.23818	31.47469
286	−176.20102	31.46467
287	−176.14552	31.44902
288	−176.10869	31.43818
289	−176.07199	31.42701
290	−176.03543	31.41553
291	−175.99902	31.40371
292	−175.94468	31.38539
293	−175.90865	31.37278
294	−175.87278	31.35985
295	−175.83644	31.34637
296	−175.80089	31.33281
297	−175.76551	31.31893
298	−175.72777	31.30370
299	−175.67361	31.30264
300	−175.62462	31.30118
301	−175.58577	31.29962
302	−175.56300	31.29856
303	−175.50480	31.29533
304	−175.44667	31.29132
305	−175.38861	31.28654
306	−175.33066	31.28099
307	−175.27281	31.27467
308	−175.21509	31.26757
309	−175.15434	31.25928
310	−175.10019	31.25117
311	−175.05021	31.24316
312	−174.99307	31.23327
313	−174.93613	31.22261
314	−174.87938	31.21120
315	−174.82112	31.19865
316	−174.78357	31.19012
317	−174.74613	31.18126
318	−174.69017	31.16735
319	−174.65301	31.15766
320	−174.61598	31.14765
321	−174.57907	31.13730
322	−174.54229	31.12663
323	−174.48737	31.11001
324	−174.43277	31.09266
325	−174.39656	31.08069
326	−174.36049	31.06840
327	−174.32457	31.05579
328	−174.28881	31.04287
329	−174.25322	31.02962
330	−174.21779	31.01607
331	−174.16782	30.99630
332	−174.12317	30.97807
333	−174.08835	30.96342
334	−174.03646	30.94087
335	−174.00210	30.92545
336	−173.95092	30.90176
337	−173.91394	30.88410
338	−173.88027	30.86763
339	−173.83014	30.84236
340	−173.79699	30.82515
341	−173.74828	30.79912
342	−173.71286	30.77965
343	−173.67333	30.75735
344	−173.63202	30.73338
345	−173.60020	30.71444
346	−173.56860	30.69522
347	−173.52165	30.66586
348	−173.49065	30.64594
349	−173.45306	30.62120
350	−173.40817	30.59091
351	−173.37804	30.57004
352	−173.34479	30.54651
353	−173.30046	30.51431
354	−173.25673	30.48153
355	−173.22791	30.45935
356	−173.19936	30.43692
357	−173.15960	30.40490
358	−173.12000	30.37227
359	−173.09241	30.34897
360	−173.06512	30.32542
361	−173.02470	30.28965
362	−172.98494	30.25335
363	−172.95880	30.22886
364	−172.93295	30.20413
365	−172.89474	30.16662
366	−172.85721	30.12860
367	−172.83096	30.10131
368	−172.79458	30.06247
369	−172.77072	30.03631
370	−172.74717	30.00995
371	−172.71244	29.97001
372	−172.67843	29.92961
373	−172.65616	29.90243
374	−172.62336	29.86129
375	−172.60190	29.83362
376	−172.57892	29.80334
377	−172.55812	29.77530
378	−172.52756	29.73290
379	−172.50760	29.70441
380	−172.48798	29.67574
381	−172.46870	29.64690
382	−172.44976	29.61789
383	−172.42200	29.57406
384	−172.40392	29.54464
385	−172.37746	29.50021
386	−172.35178	29.45544
387	−172.33510	29.42540
388	−172.31074	29.38007
389	−172.29495	29.34967
390	−172.27193	29.30382
391	−172.25702	29.27308
392	−172.23535	29.22673
393	−172.22135	29.19567
394	−172.20103	29.14885
395	−172.18794	29.11749
396	−172.18269	29.10461
397	−172.14425	29.10857
398	−172.10644	29.11211
399	−172.06858	29.11531
400	−172.01172	29.11948
401	−171.95480	29.12286
402	−171.91682	29.12469
403	−171.87882	29.12618
404	−171.82179	29.12776
405	−171.78376	29.12839
406	−171.73360	29.12869
407	−171.67655	29.12830
408	−171.63852	29.12761
409	−171.60049	29.12658
410	−171.54349	29.12439
411	−171.50552	29.12250
412	−171.45928	29.11977
413	−171.42136	29.11719
414	−171.38347	29.11427
415	−171.32671	29.10925
416	−171.28892	29.10547
417	−171.25118	29.10135
418	−171.21350	29.09689
419	−171.17551	29.09204
420	−171.13794	29.08690
421	−171.10043	29.08142
422	−171.04430	29.07256
423	−171.00697	29.06623
424	−170.96972	29.05956
425	−170.93255	29.05256
426	−170.89547	29.04522
427	−170.85848	29.03755
428	−170.82159	29.02954
429	−170.78479	29.02120
430	−170.74809	29.01253
431	−170.69325	28.99890
432	−170.65683	28.98940
433	−170.60242	28.97453
434	−170.56630	28.96421
435	−170.53030	28.95356
436	−170.49444	28.94259
437	−170.44089	28.92552
438	−170.40537	28.91374
439	−170.36999	28.90164
440	−170.33476	28.88922
441	−170.29968	28.87648
442	−170.24735	28.85678
443	−170.21266	28.84325
444	−170.16441	28.82380
445	−170.11868	28.81843
446	−170.06241	28.81110
447	−170.00627	28.80301
448	−169.95029	28.79415
449	−169.89448	28.78454
450	−169.85736	28.77770
451	−169.80186	28.76683
452	−169.74655	28.75519
453	−169.69147	28.74281
454	−169.63661	28.72968
455	−169.60017	28.72051
456	−169.54573	28.70614
457	−169.49155	28.69103
458	−169.45559	28.68055
459	−169.40188	28.66422
460	−169.34847	28.64716
461	−169.29538	28.62937
462	−169.24262	28.61087
463	−169.19019	28.59165
464	−169.13811	28.57172
465	−169.08640	28.55108
466	−169.03506	28.52974
467	−169.00106	28.51513
468	−168.95037	28.49264
469	−168.90010	28.46945
470	−168.85025	28.44559
471	−168.81726	28.42931
472	−168.76813	28.40432
473	−168.71946	28.37867
474	−168.67125	28.35237
475	−168.62352	28.32541
476	−168.58344	28.30203
477	−168.53902	28.30813
478	−168.48296	28.31510
479	−168.42677	28.32131
480	−168.37049	28.32675
481	−168.33291	28.32995
482	−168.27648	28.33411
483	−168.21998	28.33750
484	−168.16342	28.34011
485	−168.10683	28.34195
486	−168.05021	28.34302
487	−168.00043	28.34332
488	−167.94380	28.34293
489	−167.88718	28.34177
490	−167.83059	28.33984
491	−167.77404	28.33713
492	−167.73621	28.33489
493	−167.67976	28.33089
494	−167.62339	28.32613
495	−167.56712	28.32059
496	−167.51095	28.31429
497	−167.45490	28.30722
498	−167.39898	28.29939
499	−167.34321	28.29079
500	−167.30612	28.28464
501	−167.25063	28.27477
502	−167.21374	28.26778
503	−167.15856	28.25665

Point No.	Longitude	Latitude
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507	−166.94004	28.20466
508	−166.88603	28.18981
509	−166.85017	28.17950
510	−166.81444	28.16886
511	−166.79269	28.16221
512	−166.76001	28.15196
513	−166.72461	28.14051
514	−166.68934	28.12874
515	−166.65422	28.11665
516	−166.61924	28.10424
517	−166.58441	28.09152
518	−166.54974	28.07847
519	−166.51522	28.06511
520	−166.48086	28.05144
521	−166.42964	28.03034
522	−166.39570	28.01589
523	−166.36193	28.00113
524	−166.31162	27.97842
525	−166.27830	27.96290
526	−166.24517	27.94707
527	−166.21223	27.93095
528	−166.17948	27.91452
529	−166.14693	27.89780
530	−166.11458	27.88078
531	−166.06622	27.85459
532	−166.03438	27.83684
533	−166.00275	27.81881
534	−165.97134	27.80048
535	−165.94014	27.78187
536	−165.90917	27.76298
537	−165.87842	27.74381
538	−165.83251	27.71439
539	−165.80234	27.69452
540	−165.77240	27.67438
541	−165.74242	27.65378
542	−165.71296	27.63310
543	−165.68375	27.61215
544	−165.65478	27.59094
545	−165.62607	27.56946
546	−165.59760	27.54773
547	−165.56939	27.52573
548	−165.54144	27.50348
549	−165.50001	27.46963
550	−165.47272	27.44675
551	−165.44570	27.42363
552	−165.41895	27.40026
553	−165.39248	27.37664
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555	−165.34036	27.32870
556	−165.30201	27.29213
557	−165.27680	27.26746
558	−165.25188	27.24255
559	−165.21504	27.20478
560	−165.19085	27.17932
561	−165.16695	27.15365
562	−165.14335	27.12775
563	−165.12006	27.10165
564	−165.09707	27.07533
565	−165.07732	27.05226
566	−165.03132	27.03829
567	−164.99614	27.02718
568	−164.96109	27.01574
569	−164.90877	26.99799
570	−164.85677	26.97951
571	−164.82201	26.96670
572	−164.70700	26.92271
573	−164.68299	26.92268
574	−164.64572	26.92233
575	−164.58983	26.92118
576	−164.55259	26.91997
577	−164.51536	26.91843
578	−164.45955	26.91547
579	−164.40380	26.91174
580	−164.34813	26.90724
581	−164.29254	26.90197
582	−164.25554	26.89803
583	−164.21858	26.89375
584	−164.16325	26.88669
585	−164.10804	26.87887
586	−164.05299	26.87029
587	−164.01637	26.86414
588	−163.97983	26.85766
589	−163.92516	26.84731
590	−163.87068	26.83620
591	−163.81641	26.82434
592	−163.78034	26.81602
593	−163.74438	26.80737
594	−163.69063	26.79377
595	−163.63712	26.77943
596	−163.58387	26.76435
597	−163.54853	26.75389
598	−163.51331	26.74311
599	−163.46071	26.72632
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617	−167.61200	25.78498
618	−167.80596	25.81664
619	−167.96475	25.84257
620	−170.38404	26.23759
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623	−171.51400	26.58498
624	−171.56405	26.59157
625	−171.62846	26.60005
626	−173.51320	26.84822
627	−175.00000	28.26784
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630	−175.57260	28.64457
631	−175.59127	28.64937
632	−177.12157	29.04257
633	−177.20130	29.05797
634	−178.14636	29.24060
635	−178.20545	29.24908
636	−178.26503	29.25427
637	−178.32487	29.25614
638	−178.38473	29.25468
639	−178.44436	29.24991
640	−178.50352	29.24183
641	−178.56197	29.23049
642	−178.61949	29.21593
643	−178.67583	29.19820
644	−178.73077	29.17738
645	−178.78409	29.15356
646	−178.83557	29.12682
647	−178.88501	29.09728
648	−178.93222	29.06506
649	−178.97700	29.03028
650	−179.01917	28.99308
651	−179.05858	28.95361
652	−179.09506	28.91204
653	−179.12848	28.86852
654	−179.15870	28.82324
655	−179.18560	28.77636
656	−179.20909	28.72809
657	−179.22907	28.67861
658	−179.24548	28.62811
659	−179.25824	28.57681
660	−179.26732	28.52490
661	−179.27269	28.47258
662	−179.27400	28.43037
663	−179.27432	28.42008
664	−179.27400	28.41208
665	−179.27222	28.36758
666	−179.26640	28.31530
667	−179.25689	28.26345
668	−179.24374	28.21223
669	−179.22699	28.16184
670	−179.20673	28.11247
671	−179.18302	28.06433
672	−179.15598	28.01760
673	−179.12572	27.97246
674	−179.09234	27.92909
675	−179.05599	27.88765
676	−179.01681	27.84832
677	−178.97496	27.81123
678	−178.93061	27.77654
679	−178.88391	27.74438
680	−178.83507	27.71488
681	−178.78427	27.68814
682	−178.73170	27.66428
683	−178.67758	27.64338
684	−178.62211	27.62552
685	−178.56551	27.61078
686	−178.49843	27.59784
687	−177.55523	27.41586
688	−176.49794	27.24611
689	−175.00000	25.83069
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691	−171.83651	24.93729
692	−170.86958	24.62936
693	−170.83964	24.61983
694	−170.79300	24.60497
695	−170.73999	24.59633
696	−168.38105	24.21167
697	−168.38083	24.21163
698	−168.38072	24.21155
699	−166.79085	23.09144
700	−166.75000	23.06265
701	−166.60000	22.95697
702	−166.38872	22.93221
703	−166.32723	22.92501
704	−165.58333	22.83782
705	−164.86038	22.75309
706	−163.00000	22.40727
707	−163.00000	19.23458
708	−163.02954	19.26137
709	−163.05474	19.28472
710	−163.07970	19.30831
711	−163.10443	19.33213
712	−163.12891	19.35619
713	−163.15314	19.38047
714	−163.18902	19.41731
715	−163.21262	19.44214
716	−163.23597	19.46720
717	−163.25906	19.49247
718	−163.28189	19.51796
719	−163.31564	19.55659
720	−163.33781	19.58261
721	−163.35971	19.60883
722	−163.38134	19.63525
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724	−163.43423	19.70218
725	−163.45489	19.72929

Point No.	Longitude	Latitude
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728	−163.51671	19.81376
729	−163.54591	19.85563
730	−163.56501	19.88376
731	−163.58383	19.91207
732	−163.60235	19.94056
733	−163.62957	19.98361
734	−163.64735	20.01252
735	−163.66483	20.04159
736	−163.68201	20.07082
737	−163.69888	20.10022
738	−163.71545	20.12977
739	−163.73841	20.17193
740	−163.75664	20.18197
741	−163.78708	20.19906
742	−163.81734	20.21644
743	−163.84743	20.23409
744	−163.87734	20.25202
745	−163.90706	20.27023
746	−163.93659	20.28870
747	−163.95588	20.30099
748	−163.98535	20.29532
749	−164.02014	20.28893
750	−164.07244	20.27996
751	−164.12487	20.27171
752	−164.17742	20.26419
753	−164.23008	20.25739
754	−164.28284	20.25133
755	−164.33569	20.24599
756	−164.38861	20.24139
757	−164.44159	20.23752
758	−164.49463	20.23438
759	−164.54771	20.23197
760	−164.58106	20.23084
761	−164.60571	20.23016
762	−164.65884	20.22922
763	−164.71217	20.22902
764	−164.74760	20.22930
765	−164.78302	20.22990
766	−164.83614	20.23141
767	−164.88922	20.23366
768	−164.92459	20.23557
769	−164.97761	20.23904
770	−165.01292	20.24176
771	−165.04914	20.24489
772	−165.10200	20.25007
773	−165.13720	20.25393
774	−165.18992	20.26033
775	−165.24253	20.26745
776	−165.27754	20.27261
777	−165.31250	20.27808
778	−165.36483	20.28690
779	−165.41702	20.29644
780	−165.45173	20.30321
781	−165.50401	20.31402
782	−165.54798	20.32372
783	−165.60124	20.31609
784	−165.65391	20.30930
785	−165.70669	20.30323
786	−165.75955	20.29790
787	−165.81249	20.29329
788	−165.86549	20.28942
789	−165.91855	20.28628
790	−165.97164	20.28388
791	−166.02477	20.28221
792	−166.07792	20.28127
793	−166.13108	20.28107
794	−166.18423	20.28160
795	−166.23737	20.28288
796	−166.29049	20.28488
797	−166.34357	20.28762
798	−166.36478	20.28892
799	−166.39682	20.29110
800	−166.43214	20.29382
801	−166.48507	20.29852
802	−166.52032	20.30205
803	−166.57311	20.30796
804	−166.61798	20.31350
805	−166.65308	20.31816
806	−166.70563	20.32577
807	−166.74060	20.33125
808	−166.77552	20.33705
809	−166.82777	20.34635
810	−166.87988	20.35637
811	−166.91453	20.36345
812	−166.94911	20.37085
813	−166.99267	20.38061
814	−167.02709	20.38865
815	−167.07857	20.40130
816	−167.11278	20.41012
817	−167.14689	20.41926
818	−167.19433	20.43226
819	−167.22831	20.44187
820	−167.26218	20.45180
821	−167.29596	20.46203
822	−167.32963	20.47258
823	−167.36319	20.48344
824	−167.39664	20.49460
825	−167.44659	20.51193
826	−167.47975	20.52386
827	−167.51278	20.53610
828	−167.54695	20.54913
829	−167.57973	20.56197
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831	−167.64489	20.58856
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833	−167.70949	20.61634
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835	−167.77351	20.64532
836	−167.80530	20.66024
837	−167.83694	20.67546
838	−167.86841	20.69097
839	−167.91533	20.71478
840	−167.94640	20.73101
841	−167.97731	20.74752
842	−168.00804	20.76432
843	−168.03861	20.78140
844	−168.08412	20.80755
845	−168.11424	20.82533
846	−168.14417	20.84338
847	−168.17392	20.86172
848	−168.20348	20.88032
849	−168.24746	20.90873
850	−168.27653	20.92801
851	−168.31977	20.95743
852	−168.36255	20.98744
853	−168.40487	21.01804
854	−168.43282	21.03877
855	−168.47433	21.07033
856	−168.50174	21.09169
857	−168.54244	21.12420
858	−168.58263	21.15727
859	−168.62230	21.19089
860	−168.66145	21.22506
861	−168.68726	21.24813
862	−168.71283	21.27145
863	−168.75073	21.30685
864	−168.77569	21.33075
865	−168.81266	21.36701
866	−168.83700	21.39147
867	−168.87302	21.42858
868	−168.90847	21.46618
869	−168.93178	21.49152
870	−168.96624	21.52992
871	−168.99177	21.55913
872	−169.02276	21.59546
873	−169.04473	21.62184
874	−169.07716	21.66178
875	−169.09844	21.68866
876	−169.12982	21.72934
877	−169.15039	21.75669
878	−169.18071	21.79808
879	−169.20233	21.82840
880	−169.21703	21.84743
881	−169.23883	21.85466
882	−169.27247	21.86611
883	−169.32272	21.88387
884	−169.37269	21.90231
885	−169.42237	21.92143
886	−169.47175	21.94122
887	−169.52083	21.96170
888	−169.56958	21.98284
889	−169.61800	22.00464
890	−169.66609	22.02710
891	−169.71382	22.05022
892	−169.76119	22.07399
893	−169.80819	22.09840
894	−169.85481	22.12345
895	−169.90103	22.14914
896	−169.94686	22.17546
897	−169.97718	22.19335
898	−170.00653	22.21103
899	−170.05123	22.20415
900	−170.08671	22.19907
901	−170.12224	22.19431
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905	−170.28268	22.17688
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908	−170.39002	22.16891
909	−170.42584	22.16691
910	−170.46169	22.16523
911	−170.51549	22.16332
912	−170.55136	22.16245
913	−170.58725	22.16191
914	−170.62314	22.16170
915	−170.65929	22.16181
916	−170.69518	22.16224
917	−170.73106	22.16301
918	−170.76693	22.16410
919	−170.80279	22.16551
920	−170.83863	22.16725
921	−170.89236	22.17047
922	−170.92815	22.17302
923	−170.96391	22.17590
924	−170.99964	22.17910
925	−171.03533	22.18263
926	−171.07099	22.18648
927	−171.12440	22.19286
928	−171.15995	22.19751
929	−171.19545	22.20249
930	−171.23089	22.20780
931	−171.28396	22.21635
932	−171.33689	22.22563
933	−171.38967	22.23563
934	−171.42477	22.24269
935	−171.47727	22.25389
936	−171.52961	22.26579
937	−171.58175	22.27841
938	−171.63369	22.29174
939	−171.68543	22.30577
940	−171.73694	22.32050
941	−171.78823	22.33594
942	−171.83927	22.35207
943	−171.89005	22.36889
944	−171.94057	22.38641
945	−171.99082	22.40461
946	−172.03998	22.42318
947	−172.09233	22.42751

Point No.	Longitude	Latitude
948	−172.12811	22.43088
949	−172.18170	22.43653
950	−172.21738	22.44070
951	−172.25302	22.44519
952	−172.28861	22.45001
953	−172.32414	22.45515
954	−172.37735	22.46346
955	−172.41274	22.46941
956	−172.46572	22.47892
957	−172.50095	22.48567
958	−172.55366	22.49638
959	−172.58872	22.50392
960	−172.64114	22.51582
961	−172.67599	22.52415
962	−172.71075	22.53279
963	−172.76272	22.54635
964	−172.79725	22.55578
965	−172.83168	22.56552
966	−172.86601	22.57558
967	−172.90023	22.58594
968	−172.95136	22.60207
969	−172.98531	22.61320
970	−173.03602	22.63048
971	−173.08645	22.64845
972	−173.11992	22.66081
973	−173.15325	22.67347
974	−173.18646	22.68643
975	−173.23601	22.70643
976	−173.26888	22.72014
977	−173.30160	22.73415
978	−173.34556	22.75354
979	−173.37723	22.74830
980	−173.41277	22.74274
981	−173.44836	22.73750
982	−173.48400	22.73258
983	−173.51970	22.72798
984	−173.55544	22.72371
985	−173.59122	22.71976
986	−173.62704	22.71613
987	−173.66290	22.71283
988	−173.69879	22.70985
989	−173.73470	22.70720
990	−173.77065	22.70487
991	−173.80661	22.70286
992	−173.84260	22.70118
993	−173.87860	22.69983
994	−173.91461	22.69880
995	−173.95063	22.69810
996	−173.98666	22.69772
997	−174.02268	22.69767
998	−174.05871	22.69794
999	−174.09473	22.69854
1000	−174.13075	22.69947
1001	−174.16675	22.70072
1002	−174.20274	22.70229
1003	−174.23871	22.70419
1004	−174.27466	22.70642
1005	−174.31059	22.70897
1006	−174.34649	22.71185
1007	−174.38235	22.71505
1008	−174.41819	22.71857
1009	−174.45398	22.72242
1010	−174.48974	22.72659
1011	−174.52545	22.73108
1012	−174.56111	22.73589
1013	−174.59672	22.74103
1014	−174.63227	22.74649
1015	−174.66777	22.75227
1016	−174.70321	22.75837
1017	−174.73859	22.76479
1018	−174.77389	22.77154
1019	−174.82672	22.78224
1020	−174.86184	22.78978
1021	−174.89689	22.79763
1022	−174.93185	22.80580
1023	−174.96673	22.81429
1024	−175.00151	22.82308
1025	−175.03621	22.83220
1026	−175.07081	22.84163
1027	−175.10531	22.85136
1028	−175.13972	22.86141
1029	−175.17401	22.87178
1030	−175.20820	22.88244
1031	−175.24228	22.89342
1032	−175.27624	22.90471
1033	−175.31009	22.91630
1034	−175.34381	22.92820
1035	−175.37741	22.94040
1036	−175.41089	22.95290
1037	−175.44423	22.96571
1038	−175.47744	22.97882
1039	−175.51051	22.99222
1040	−175.54345	23.00593
1041	−175.57624	23.01993
1042	−175.60888	23.03422
1043	−175.64138	23.04881
1044	−175.67372	23.06370
1045	−175.70591	23.07887
1046	−175.73795	23.09434
1047	−175.76982	23.11009
1048	−175.81731	23.13426
1049	−175.84877	23.15073
1050	−175.88005	23.16748
1051	−175.91116	23.18451
1052	−175.94209	23.20183
1053	−175.98815	23.22832
1054	−176.01862	23.24633
1055	−176.04891	23.26461
1056	−176.09398	23.29254
1057	−176.12379	23.31150
1058	−176.15339	23.33073
1059	−176.18280	23.35022
1060	−176.21200	23.36998
1061	−176.25542	23.40011
1062	−176.28410	23.42053
1063	−176.31256	23.44120
1064	−176.35486	23.47268
1065	−176.38278	23.49399
1066	−176.41048	23.51554
1067	−176.43795	23.53735
1068	−176.46520	23.55940
1069	−176.50563	23.59294
1070	−176.53229	23.61560
1071	−176.55872	23.63850
1072	−176.59790	23.67330
1073	−176.62372	23.69679
1074	−176.66199	23.73246
1075	−176.68719	23.75653
1076	−176.71213	23.78082
1077	−176.73682	23.80534
1078	−176.76125	23.83007
1079	−176.78542	23.85503
1080	−176.80933	23.88021
1081	−176.83297	23.90559
1082	−176.85635	23.93119
1083	−176.87945	23.95700
1084	−176.90229	23.98302
1085	−176.93602	24.02243
1086	−176.96913	24.06229
1087	−176.99085	24.08911
1088	−177.01229	24.11613
1089	−177.03344	24.14334
1090	−177.06462	24.18451
1091	−177.08505	24.21218
1092	−177.10518	24.24004
1093	−177.12502	24.26808
1094	−177.14456	24.29630
1095	−177.17331	24.33895
1096	−177.19209	24.36760
1097	−177.21058	24.39642
1098	−177.22875	24.42540
1099	−177.25544	24.46918
1100	−177.27284	24.49856
1101	−177.28992	24.52810
1102	−177.30670	24.55779
1103	−177.32315	24.58763
1104	−177.33929	24.61762
1105	−177.36249	24.66210
1106	−177.38606	24.67081
1107	−177.41985	24.68359
1108	−177.45352	24.69667
1109	−177.48704	24.71005
1110	−177.53706	24.73067
1111	−177.57023	24.74479
1112	−177.60325	24.75920
1113	−177.63612	24.77391
1114	−177.66883	24.78891
1115	−177.71760	24.81195
1116	−177.74992	24.82767
1117	−177.78206	24.84367
1118	−177.81404	24.85996
1119	−177.83690	24.87185
1120	−177.88667	24.87745
1121	−177.94111	24.88429
1122	−177.97195	24.88850
1123	−177.99642	24.89200
1124	−178.05062	24.90028
1125	−178.10469	24.90929
1126	−178.14066	24.91569
1127	−178.16577	24.92034
1128	−178.21953	24.93078
1129	−178.27313	24.94194
1130	−178.32655	24.95380
1131	−178.37978	24.96637
1132	−178.43281	24.97965
1133	−178.48563	24.99363
1134	−178.53822	25.00832
1135	−178.59058	25.02370
1136	−178.61445	25.03096
1137	−178.64360	25.04005
1138	−178.67821	25.05115
1139	−178.70077	25.05859
1140	−178.72148	25.06052
1141	−178.75794	25.06420
1142	−178.81257	25.07031
1143	−178.86732	25.07718
1144	−178.90360	25.08214
1145	−178.93984	25.08742
1146	−178.98140	25.09382
1147	−179.01755	25.09959
1148	−179.07166	25.10883
1149	−179.10765	25.11539
1150	−179.14357	25.12227
1151	−179.19731	25.13318
1152	−179.25088	25.14480
1153	−179.28649	25.15295
1154	−179.32201	25.16140
1155	−179.35744	25.17018
1156	−179.38198	25.17642
1157	−179.43516	25.19048
1158	−179.47030	25.20018
1159	−179.50534	25.21020
1160	−179.55770	25.22581
1161	−179.60982	25.24211
1162	−179.66168	25.25911
1163	−179.69610	25.27081
1164	−179.73039	25.28283
1165	−179.76456	25.29514
1166	−179.79860	25.30776
1167	−179.83251	25.32068
1168	−179.86628	25.33389
1169	−179.89991	25.34741

Point No.	Longitude	Latitude
1170	−179.93340	25.36122
1171	−179.96674	25.37533
1172	−180.00000	25.38976

Appendix C to Subpart W of Part 922—Coordinates for the Midway Atoll Special Management Area

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

The boundaries for the areas listed in this appendix, unless otherwise described in this rule, begin at Point 1 as indicated in the particular area's coordinate table and continue to each successive point in numerical order until ending at the last point in the table.

Point No.	Longitude	Latitude
1	−177.08955	28.24843
2	−177.08746	28.20746
3	−177.08807	28.20039
4	−177.08784	28.19413
5	−177.08714	28.18773
6	−177.08675	28.17981
7	−177.08685	28.17805
8	−177.09492	28.15837
9	−177.10266	28.14167
10	−177.10685	28.13347
11	−177.12055	28.10937
12	−177.12905	28.09614
13	−177.13930	28.08402
14	−177.14478	28.07745
15	−177.14835	28.07359
16	−177.15014	28.07029
17	−177.15425	28.06622
18	−177.16032	28.06163
19	−177.17073	28.05368
20	−177.18451	28.04293
21	−177.19497	28.03652
22	−177.20126	28.03328
23	−177.21758	28.02455
24	−177.22558	28.02062
25	−177.24634	28.01309
26	−177.26874	28.00536
27	−177.28593	28.00286
28	−177.29121	28.00182
29	−177.31326	27.99812
30	−177.32347	27.99681
31	−177.33018	27.99592
32	−177.34277	27.99426
33	−177.35598	27.99264
34	−177.36949	27.99083
35	−177.37935	27.99086
36	−177.40144	27.99078
37	−177.40505	27.99113
38	−177.43205	27.99376
39	−177.47772	28.00286
40	−177.49254	28.00680
41	−177.50854	28.01094
42	−177.52096	28.01549
43	−177.53867	28.02638
44	−177.55653	28.03706
45	−177.57532	28.05208
46	−177.58846	28.06265
47	−177.59622	28.06789
48	−177.60135	28.07601
49	−177.62006	28.10264
50	−177.63751	28.13400
51	−177.64543	28.14824
52	−177.64822	28.16145
53	−177.65246	28.18050
54	−177.65547	28.19434
55	−177.65675	28.20088
56	−177.65784	28.21354
57	−177.65334	28.23184
58	−177.65201	28.23753
59	−177.65356	28.25431
60	−177.65370	28.25897
61	−177.64485	28.28180
62	−177.63917	28.29737
63	−177.63311	28.30658
64	−177.62398	28.32071
65	−177.61280	28.33404
66	−177.60942	28.33819
67	−177.60305	28.35468
68	−177.59751	28.36931
69	−177.59223	28.37618
70	−177.58369	28.38566
71	−177.57201	28.39836
72	−177.56751	28.40427
73	−177.56371	28.40708
74	−177.56083	28.40921
75	−177.54724	28.42088
76	−177.53575	28.43063
77	−177.53169	28.43369
78	−177.52645	28.43765
79	−177.51294	28.44685
80	−177.50036	28.45508
81	−177.49213	28.46057
82	−177.48856	28.46154
83	−177.44919	28.47563
84	−177.43381	28.48016
85	−177.42573	28.48263
86	−177.41843	28.48290
87	−177.41073	28.48296
88	−177.40079	28.48392
89	−177.39471	28.48423
90	−177.38430	28.48485
91	−177.37739	28.48485
92	−177.36644	28.48402
93	−177.35961	28.48348
94	−177.34200	28.48260
95	−177.33494	28.48212
96	−177.32593	28.48150
97	−177.31568	28.47855
98	−177.30326	28.47485
99	−177.28841	28.46971
100	−177.26868	28.46353
101	−177.24613	28.45463
102	−177.22835	28.44555
103	−177.20144	28.42977
104	−177.18994	28.42291
105	−177.17441	28.41273
106	−177.16004	28.39797
107	−177.14459	28.38222
108	−177.13946	28.37700
109	−177.13356	28.36519
110	−177.12744	28.35256
111	−177.12069	28.33683
112	−177.10531	28.30631
113	−177.09483	28.27704
114	−177.09204	28.26549
115	−177.09085	28.25735
116	−177.08955	28.24843

Appendix D to Subpart W of Part 922—Coordinates for the Special Preservation Areas (SPAs)

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

The boundaries for the areas listed in this appendix, unless otherwise described in this rule, begin at Point 1 as indicated in the particular area's coordinate table and continue to each successive point in numerical order until ending at the last point in the table.

Point No.	Longitude	Latitude
1	−178.23368	28.40709
2	−178.23399	28.40003
3	−178.23440	28.39722
4	−178.23512	28.39369
5	−178.23696	28.38789
6	−178.23973	28.37883
7	−178.24045	28.37702
8	−178.24137	28.37512
9	−178.24579	28.36635
10	−178.24743	28.36318
11	−178.24774	28.36273
12	−178.24815	28.36228
13	−178.24805	28.36164
14	−178.24702	28.36038
15	−178.24097	28.35222
16	−178.24035	28.35167
17	−178.23841	28.34996
18	−178.23185	28.34488
19	−178.23060	28.34403
20	−178.22978	28.34357
21	−178.22753	28.34312
22	−178.22690	28.34302
23	−178.21697	28.34140
24	−178.21615	28.34122
25	−178.21584	28.34095
26	−178.21338	28.33004
27	−178.21297	28.32826
28	−178.21779	28.32083
29	−178.21879	28.32061
30	−178.22845	28.31847
31	−178.23319	28.32410
32	−178.23501	28.32627
33	−178.23552	28.32681
34	−178.25079	28.32971
35	−178.26350	28.33225
36	−178.26422	28.34231
37	−178.26818	28.34555
38	−178.26842	28.34575
39	−178.26909	28.34532
40	−178.27099	28.34412
41	−178.27658	28.34131
42	−178.28211	28.33895
43	−178.28642	28.33768
44	−178.29103	28.33696
45	−178.29540	28.33661
46	−178.29554	28.33660
47	−178.30384	28.33578
48	−178.30907	28.33569
49	−178.31266	28.33578
50	−178.31573	28.33605
51	−178.31768	28.33605
52	−178.35403	28.33853
53	−178.38276	28.34385
54	−178.39558	28.33339
55	−178.40626	28.32467
56	−178.40687	28.32413
57	−178.40784	28.32370
58	−178.41318	28.32313
59	−178.43005	28.32132
60	−178.43175	28.34030
61	−178.43425	28.36460
62	−178.43437	28.36643
63	−178.43437	28.36848
64	−178.43413	28.37064
65	−178.43315	28.37926
66	−178.43156	28.39259
67	−178.43742	28.39905
68	−178.44199	28.40585
69	−178.44313	28.40899

Point No.	Longitude	Latitude
70	−178.44498	28.41716
71	−178.44597	28.43612
72	−178.44569	28.44605
73	−178.44512	28.44843
74	−178.44057	28.46036
75	−178.43246	28.47827
76	−178.41611	28.49509
77	−178.41398	28.49698
78	−178.40985	28.49986
79	−178.40098	28.50595
80	−178.40072	28.50608
81	−178.39600	28.50846
82	−178.38392	28.51398
83	−178.38193	28.51473
84	−178.37937	28.51548
85	−178.37098	28.51712
86	−178.35889	28.51963
87	−178.35661	28.52000
88	−178.35164	28.52050
89	−178.34909	28.52081
90	−178.33751	28.52180
91	−178.33658	28.52189
92	−178.33228	28.52587
93	−178.33115	28.52660
94	−178.32931	28.52759
95	−178.32480	28.52913
96	−178.31988	28.53437
97	−178.30929	28.54572
98	−178.29832	28.54382
99	−178.29186	28.53171
100	−178.28776	28.52320
101	−178.28725	28.52212
102	−178.28653	28.51823
103	−178.28426	28.50560
104	−178.28365	28.50270
105	−178.28252	28.50180
106	−178.27832	28.49935
107	−178.27504	28.49682
108	−178.26581	28.48958
109	−178.26013	28.48471
110	−178.24899	28.47256
111	−178.24752	28.47095
112	−178.24660	28.46951
113	−178.24578	28.46733
114	−178.24281	28.45684
115	−178.24106	28.45195
116	−178.24024	28.44950
117	−178.23953	28.44616
118	−178.23758	28.43731
119	−178.23337	28.41884
120	−178.23317	28.41739
121	−178.23327	28.41441
122	−178.23368	28.40709

TABLE 2—COORDINATES FOR MANAWAI (PEARL AND HERMES ATOLL) SPA

Point ID	Longitude	Latitude
1	−175.73629	28.02156
2	−175.71790	28.00837
3	−175.71623	28.00719
4	−175.71293	27.99705
5	−175.71278	27.99658
6	−175.71189	27.99385
7	−175.71115	27.99258
8	−175.70898	27.99050
9	−175.69243	27.97745
10	−175.69085	27.97602
11	−175.69057	27.97577
12	−175.68524	27.97093
13	−175.67939	27.96411

TABLE 2—COORDINATES FOR MANAWAI (PEARL AND HERMES ATOLL) SPA—Continued

Point ID	Longitude	Latitude
14	−175.67571	27.95877
15	−175.67371	27.95477
16	−175.67020	27.94735
17	−175.66886	27.94409
18	−175.66752	27.94038
19	−175.66602	27.93549
20	−175.66489	27.92948
21	−175.66468	27.92837
22	−175.66384	27.92295
23	−175.66334	27.91686
24	−175.66328	27.91526
25	−175.66326	27.91489
26	−175.66317	27.91271
27	−175.66317	27.90692
28	−175.66368	27.89921
29	−175.66418	27.89461
30	−175.66602	27.88304
31	−175.67187	27.86600
32	−175.67421	27.85962
33	−175.67471	27.85725
34	−175.67655	27.85012
35	−175.67885	27.84184
36	−175.67973	27.83869
37	−175.68140	27.83409
38	−175.68441	27.82770
39	−175.68727	27.82333
40	−175.68742	27.82310
41	−175.68976	27.81946
42	−175.69041	27.81831
43	−175.69080	27.81751
44	−175.69131	27.81589
45	−175.69352	27.80876
46	−175.69355	27.80857
47	−175.69378	27.80738
48	−175.69416	27.80646
49	−175.69494	27.80542
50	−175.69533	27.80462
51	−175.69585	27.80335
52	−175.69870	27.79552
53	−175.69909	27.79437
54	−175.70077	27.79196
55	−175.70453	27.78562
56	−175.71062	27.77711
57	−175.71528	27.77077
58	−175.71295	27.76548
59	−175.71268	27.76488
60	−175.71218	27.76378
61	−175.71231	27.76297
62	−175.71322	27.76193
63	−175.71931	27.75756
64	−175.72151	27.75572
65	−175.72228	27.75560
66	−175.72578	27.75526
67	−175.72695	27.75491
68	−175.72747	27.75445
69	−175.72980	27.75100
70	−175.73135	27.74881
71	−175.73355	27.74708
72	−175.73796	27.74386
73	−175.74327	27.74109
74	−175.75091	27.73741
75	−175.75698	27.73511
76	−175.75791	27.73476
77	−175.76283	27.73372
78	−175.76796	27.73254
79	−175.77107	27.73231
80	−175.78169	27.73128
81	−175.79452	27.73035
82	−175.79996	27.73035
83	−175.81744	27.73105

TABLE 2—COORDINATES FOR MANAWAI (PEARL AND HERMES ATOLL) SPA—Continued

Point ID	Longitude	Latitude
84	−175.82120	27.73139
85	−175.84245	27.73496
86	−175.84329	27.73496
87	−175.84394	27.73484
88	−175.84510	27.73392
89	−175.85378	27.72793
90	−175.85598	27.72667
91	−175.86168	27.72379
92	−175.86855	27.72068
93	−175.87632	27.71722
94	−175.88163	27.71515
95	−175.88928	27.71215
96	−175.89627	27.70962
97	−175.89926	27.70853
98	−175.90612	27.70605
99	−175.91616	27.70257
100	−175.91914	27.70177
101	−175.92277	27.70108
102	−175.93248	27.69923
103	−175.93689	27.69877
104	−175.94039	27.69831
105	−175.94660	27.69762
106	−175.95023	27.69762
107	−175.95632	27.69773
108	−175.95943	27.69796
109	−175.96267	27.69843
110	−175.96837	27.69935
111	−175.96966	27.69992
112	−175.97834	27.70338
113	−175.98826	27.70847
114	−175.99473	27.71262
115	−176.00250	27.71872
116	−176.00833	27.72299
117	−176.01585	27.72967
118	−176.02401	27.73784
119	−176.02918	27.74373
120	−176.03139	27.74625
121	−176.03359	27.74913
122	−176.03489	27.75120
123	−176.03880	27.75840
124	−176.04036	27.76151
125	−176.04360	27.76819
126	−176.04424	27.76877
127	−176.04619	27.76911
128	−176.04968	27.76992
129	−176.05098	27.77049
130	−176.05733	27.77521
131	−176.05831	27.77593
132	−176.06717	27.78235
133	−176.06225	27.79271
134	−176.05820	27.80097
135	−176.04866	27.82041
136	−176.04154	27.83526
137	−176.03920	27.84003
138	−176.03868	27.84107
139	−176.03830	27.84256
140	−176.03622	27.85464
141	−176.03609	27.85660
142	−176.03661	27.87231
143	−176.03635	27.87484
144	−176.03467	27.87886
145	−176.02936	27.89151
146	−176.02871	27.89232
147	−176.02637	27.89422
148	−176.01452	27.89948
149	−176.00953	27.90169
150	−175.98505	27.91078
151	−175.97974	27.91767
152	−175.97806	27.91986
153	−175.97559	27.92227

TABLE 2—COORDINATES FOR MANAWAI (PEARL AND HERMES ATOLL) SPA—Continued

Point ID	Longitude	Latitude
154	−175.96800	27.92876
155	−175.96515	27.93071
156	−175.96243	27.93244
157	−175.95893	27.93474
158	−175.95751	27.93554
159	−175.95531	27.93634
160	−175.94676	27.93979
161	−175.93976	27.94313
162	−175.93730	27.94462
163	−175.93019	27.94940
164	−175.91849	27.95667
165	−175.89960	27.96883
166	−175.88990	27.97506
167	−175.88673	27.97684
168	−175.87603	27.98202
169	−175.86868	27.98514
170	−175.84284	27.99650
171	−175.81723	28.00661
172	−175.81543	28.00732
173	−175.80908	28.00970
174	−175.80440	28.01088
175	−175.79989	28.01133
176	−175.79170	28.01118
177	−175.78250	28.01088
178	−175.78033	28.01074
179	−175.78013	28.01073
180	−175.77097	28.01014
181	−175.76796	28.00984
182	−175.73629	28.02156

TABLE 3—COORDINATES FOR KAPOU (LISIANSKI ISLAND) SPA

Point No.	Longitude	Latitude
1	−173.82216	26.08261
2	−173.81417	26.06651
3	−173.81089	26.06033
4	−173.80358	26.04582
5	−173.80187	26.04312
6	−173.79902	26.03951
7	−173.79216	26.03255
8	−173.78288	26.02340
9	−173.76999	26.01042
10	−173.76842	26.00888
11	−173.76714	26.00720
12	−173.75672	25.99276
13	−173.75329	25.98625
14	−173.75257	25.98316
15	−173.75272	25.98019
16	−173.75357	25.97607
17	−173.75414	25.97272
18	−173.75429	25.97130
19	−173.75457	25.97065
20	−173.75629	25.96949
21	−173.77427	25.95518
22	−173.79226	25.94087
23	−173.79613	25.91463
24	−173.79656	25.91231
25	−173.79685	25.91089
26	−173.79770	25.91025
27	−173.84842	25.87454
28	−173.85185	25.87235
29	−173.85299	25.87209
30	−173.86184	25.87364
31	−173.88326	25.87777
32	−173.89205	25.87946
33	−173.89348	25.87959

TABLE 3—COORDINATES FOR KAPOU (LISIANSKI ISLAND) SPA—Continued

Point No.	Longitude	Latitude
34	−173.89805	25.87971
35	−173.90349	25.87978
36	−173.90608	25.87981
37	−173.91654	25.87993
38	−173.91667	25.87993
39	−173.91893	25.87996
40	−173.91989	25.87997
41	−173.93702	25.88023
42	−173.94445	25.88023
43	−173.94602	25.88062
44	−173.95530	25.88526
45	−173.99537	25.90548
46	−174.00031	25.90797
47	−174.00548	25.91058
48	−174.02703	25.92167
49	−174.09677	25.95696
50	−174.11041	25.96396
51	−174.11155	25.96538
52	−174.11498	25.97067
53	−174.12111	25.97892
54	−174.12311	25.98124
55	−174.12483	25.98279
56	−174.14281	25.99916
57	−174.14396	26.00019
58	−174.14453	26.00083
59	−174.14595	26.00560
60	−174.15196	26.02194
61	−174.15682	26.03560
62	−174.15782	26.03831
63	−174.15839	26.04089
64	−174.15867	26.04295
65	−174.15839	26.05197
66	−174.15740	26.08891
67	−174.15668	26.10643
68	−174.15669	26.11617
69	−174.15600	26.12038
70	−174.13944	26.16391
71	−174.13478	26.17505
72	−174.12292	26.18449
73	−174.09565	26.20576
74	−174.08837	26.21129
75	−174.08723	26.21206
76	−174.08651	26.21232
77	−174.08452	26.21258
78	−174.07352	26.21412
79	−174.05468	26.21682
80	−174.05239	26.21721
81	−174.05082	26.21721
82	−174.01328	26.21451
83	−173.98436	26.21258
84	−173.95210	26.19379
85	−173.93939	26.18620
86	−173.93511	26.18350
87	−173.93411	26.18260
88	−173.93140	26.17951
89	−173.91733	26.16389
90	−173.90177	26.14625
91	−173.89892	26.14329
92	−173.89749	26.14200
93	−173.89663	26.14123
94	−173.88792	26.13569
95	−173.88360	26.13292
96	−173.87247	26.12532
97	−173.86333	26.11940
98	−173.86176	26.11798
99	−173.85890	26.11566
100	−173.84391	26.10291
101	−173.83458	26.09485
102	−173.82473	26.08661
103	−173.82373	26.08545
104	−173.82216	26.08261

TABLE 4—COORDINATES FOR KAMOLE (LAYSAN ISLAND) SPA

Point No.	Longitude	Latitude
1	−171.79754	25.90062
2	−171.77776	25.90028
3	−171.76856	25.90040
4	−171.76743	25.90017
5	−171.76440	25.89960
6	−171.72850	25.89300
7	−171.68258	25.88476
8	−171.67766	25.88385
9	−171.67552	25.88328
10	−171.67325	25.88260
11	−171.65713	25.87714
12	−171.63979	25.87153
13	−171.63303	25.86920
14	−171.62757	25.86732
15	−171.62656	25.86686
16	−171.62568	25.86595
17	−171.62502	25.86507
18	−171.61749	25.85490
19	−171.60335	25.83593
20	−171.60146	25.83319
21	−171.60007	25.82681
22	−171.59667	25.80984
23	−171.59327	25.79245
24	−171.59327	25.79165
25	−171.60171	25.76624
26	−171.60528	25.76115
27	−171.61460	25.74736
28	−171.61775	25.74280
29	−171.61863	25.74166
30	−171.62266	25.73779
31	−171.63183	25.72850
32	−171.63489	25.72540
33	−171.63640	25.72415
34	−171.65101	25.71708
35	−171.65341	25.71571
36	−171.65643	25.71354
37	−171.66122	25.70739
38	−171.66827	25.70032
39	−171.66915	25.70009
40	−171.70065	25.69222
41	−171.70153	25.69210
42	−171.70216	25.69245
43	−171.70695	25.69735
44	−171.70879	25.69916
45	−171.70980	25.69985
46	−171.71156	25.70019
47	−171.72781	25.70027
48	−171.73461	25.70030
49	−171.73537	25.70007
50	−171.75112	25.69221
51	−171.75162	25.69198
52	−171.75351	25.69186
53	−171.77795	25.69209
54	−171.78475	25.69198
55	−171.79678	25.69800
56	−171.80964	25.70443
57	−171.81782	25.70853
58	−171.81846	25.70946
59	−171.83395	25.73225
60	−171.83916	25.74030
61	−171.84621	25.75067
62	−171.85049	25.75694
63	−171.85175	25.75900
64	−171.85377	25.76298
65	−171.86802	25.79154
66	−171.86827	25.79234
67	−171.86991	25.80031
68	−171.87319	25.81695
69	−171.87634	25.83252
70	−171.87634	25.83343
71	−171.87596	25.83457

TABLE 4—COORDINATES FOR KAMOLE (LAYSAN ISLAND) SPA—Continued

Point No.	Longitude	Latitude
72	−171.86853	25.84402
73	−171.83837	25.88003
74	−171.83602	25.88246
75	−171.83519	25.88335
76	−171.83459	25.88376
77	−171.83330	25.88437
78	−171.82477	25.88874
79	−171.82223	25.89004
80	−171.80446	25.89880
81	−171.80283	25.89960
82	−171.80106	25.90017
83	−171.79754	25.90062

TABLE 5—COORDINATES FOR KAMOKUOKAMOHOALIʻI (MARO REEF) SPA

Point No.	Longitude	Latitude
1	−170.51849	25.56689
2	−170.42884	25.48429
3	−170.40989	25.46684
4	−170.36498	25.39615
5	−170.35211	25.37520
6	−170.38052	25.31861
7	−170.41008	25.25900
8	−170.42639	25.25050
9	−170.49312	25.25500
10	−170.54275	25.25849
11	−170.59335	25.28380
12	−170.65120	25.29999
13	−170.71939	25.30982
14	−170.76864	25.31704
15	−170.80164	25.33336
16	−170.81026	25.35866
17	−170.86881	25.39206
18	−170.89413	25.45071
19	−170.90203	25.52562
20	−170.90204	25.55000
21	−170.87689	25.58379
22	−170.80870	25.62631
23	−170.77706	25.63386
24	−170.71015	25.63370
25	−170.68577	25.61709
26	−170.57600	25.59194
27	−170.52174	25.56835
28	−170.51849	25.56689

TABLE 6—COORDINATES FOR ʻŌNŪNUI AND ʻŌNUIKI (GARDNER PINNACLES) SPA

Point ID	Longitude	Latitude
1	−167.90376	24.42883
2	−167.95520	24.41130
3	−167.99102	24.42020
4	−168.00495	24.43820
5	−168.00858	24.45765
6	−168.01169	24.47484
7	−168.01779	24.50855
8	−168.05095	24.57549
9	−168.08488	24.59196
10	−168.10261	24.63819
11	−168.12654	24.70001
12	−168.12689	24.70299
13	−168.13443	24.77502
14	−168.15180	24.81718

TABLE 6—COORDINATES FOR ʻŌNŪNUI AND ʻŌNUIKI (GARDNER PINNACLES) SPA—Continued

Point ID	Longitude	Latitude
15	−168.15133	24.82629
16	−168.15166	24.88353
17	−168.16317	24.89394
18	−168.22632	24.95007
19	−168.26782	25.00868
20	−168.27946	25.06562
21	−168.26946	25.09337
22	−168.25241	25.10411
23	−168.24399	25.12438
24	−168.22776	25.16582
25	−168.19810	25.18222
26	−168.14391	25.19196
27	−168.08884	25.19330
28	−168.04250	25.17414
29	−167.98399	25.12434
30	−167.93393	25.07053
31	−167.92639	25.04237
32	−167.94327	25.01312
33	−167.94328	24.94223
34	−167.92440	24.90657
35	−167.90375	24.88387
36	−167.89337	24.85096
37	−167.89917	24.74685
38	−167.87394	24.63042
39	−167.87471	24.59063
40	−167.86815	24.56390
41	−167.87627	24.49318
42	−167.88943	24.45607
43	−167.89140	24.45052
44	−167.90376	24.42883

TABLE 7—COORDINATES FOR LALO (FRENCH FRIGATE SHOALS) SPA

Point No.	Longitude	Latitude
1	−165.88287	24.04302
2	−165.81715	24.03363
3	−165.81598	24.03346
4	−165.68957	24.01561
5	−165.61030	24.00420
6	−165.58476	24.00053
7	−165.58475	23.99013
8	−165.58469	23.89901
9	−165.58473	23.88171
10	−165.58487	23.82706
11	−165.58493	23.80510
12	−165.58474	23.74606
13	−165.58467	23.72209
14	−165.58477	23.69139
15	−165.58493	23.64173
16	−165.58492	23.64015
17	−165.58472	23.55814
18	−165.58465	23.53104
19	−165.58492	23.50047
20	−165.68850	23.51533
21	−165.82902	23.53508
22	−165.88403	23.54307
23	−165.90329	23.54586
24	−165.90597	23.54625
25	−165.99383	23.55900
26	−166.03245	23.56447
27	−166.08499	23.57190
28	−166.10117	23.57420
29	−166.13444	23.57892
30	−166.16019	23.58257
31	−166.19002	23.58681
32	−166.22864	23.59229

TABLE 7—COORDINATES FOR LALO (FRENCH FRIGATE SHOALS) SPA—Continued

Point No.	Longitude	Latitude
33	−166.23919	23.59378
34	−166.26236	23.59707
35	−166.28601	23.60043
36	−166.33447	23.60733
37	−166.35885	23.61080
38	−166.37208	23.61269
39	−166.39868	23.61648
40	−166.40303	23.61710
41	−166.40724	23.61770
42	−166.50660	23.63186
43	−166.60789	23.64643
44	−166.72350	23.66307
45	−166.92987	23.68841
46	−166.92855	23.74505
47	−166.92820	23.78485
48	−166.92779	23.83124
49	−166.92817	23.83749
50	−166.92683	23.92953
51	−166.92567	24.00460
52	−166.92523	24.03315
53	−166.92517	24.03699
54	−166.90344	24.03664
55	−166.75320	24.03423
56	−166.75144	24.16680
57	−166.69607	24.15879
58	−166.66261	24.15394
59	−166.60150	24.14542
60	−166.50010	24.13128
61	−166.49143	24.13008
62	−166.46034	24.12556
63	−166.43233	24.12150
64	−166.32588	24.10620
65	−166.31489	24.10462
66	−166.10509	24.07477
67	−166.02473	24.06329
68	−165.88287	24.04302

TABLE 8—COORDINATES FOR MOKUMANAMANA (NECKER) SPA

Point ID	Longitude	Latitude
1	−164.54332	23.62574
2	−164.53774	23.61546
3	−164.53568	23.61072
4	−164.53436	23.60261
5	−164.53111	23.58291
6	−164.52906	23.55327
7	−164.52347	23.54272
8	−164.51842	23.53517
9	−164.51078	23.52258
10	−164.50137	23.51811
11	−164.48756	23.51042
12	−164.47390	23.50281
13	−164.45451	23.49239
14	−164.45025	23.48860
15	−164.44290	23.48074
16	−164.42150	23.47295
17	−164.40063	23.46523
18	−164.39476	23.46347
19	−164.38256	23.46334
20	−164.37022	23.46374
21	−164.36817	23.46306
22	−164.35392	23.45819
23	−164.34628	23.45541
24	−164.32877	23.44951
25	−164.31431	23.43772
26	−164.30609	23.43154

TABLE 8—COORDINATES FOR MOKUMANAMANA (NECKER) SPA—Continued

Point ID	Longitude	Latitude
27	−164.29543	23.41512
28	−164.28443	23.39873
29	−164.28154	23.38946
30	−164.27484	23.36629
31	−164.26980	23.35201
32	−164.25929	23.32687
33	−164.25290	23.31240
34	−164.25199	23.30818
35	−164.25305	23.30467
36	−164.25391	23.30232
37	−164.25937	23.28868
38	−164.26848	23.27932
39	−164.27039	23.27580
40	−164.27641	23.25830
41	−164.28332	23.25152
42	−164.29933	23.23578
43	−164.31485	23.23457
44	−164.32999	23.23375
45	−164.33983	23.23321
46	−164.37024	23.23810
47	−164.38214	23.24651
48	−164.39668	23.25641
49	−164.40006	23.25695
50	−164.41146	23.25833
51	−164.45730	23.26308
52	−164.46347	23.26620
53	−164.47251	23.27100
54	−164.48529	23.29229
55	−164.51115	23.30260
56	−164.52540	23.30843
57	−164.56870	23.30925
58	−164.59206	23.30912
59	−164.60425	23.30763
60	−164.63246	23.29963
61	−164.64245	23.30098
62	−164.64083	23.31400
63	−164.63466	23.32091
64	−164.62891	23.32479
65	−164.62024	23.32764
66	−164.62303	23.34282
67	−164.61612	23.34892
68	−164.61039	23.35488
69	−164.60465	23.36962
70	−164.60009	23.38141
71	−164.59358	23.39656
72	−164.59304	23.39780
73	−164.58670	23.42106
74	−164.58127	23.44558
75	−164.59302	23.45045
76	−164.60713	23.45628
77	−164.61021	23.46671
78	−164.61221	23.46868
79	−164.62367	23.48006
80	−164.62734	23.48141
81	−164.64776	23.48913
82	−164.65452	23.49062
83	−164.66774	23.49265
84	−164.69032	23.49644
85	−164.70192	23.49738
86	−164.71470	23.49725
87	−164.71956	23.49693
88	−164.73882	23.49564
89	−164.73909	23.49562
90	−164.76295	23.48763
91	−164.77141	23.48479
92	−164.77495	23.49017
93	−164.78145	23.50004
94	−164.78336	23.50315
95	−164.78689	23.50423
96	−164.80114	23.51019

TABLE 8—COORDINATES FOR MOKUMANAMANA (NECKER) SPA—Continued

Point ID	Longitude	Latitude
97	−164.81245	23.52400
98	−164.83023	23.53537
99	−164.83393	23.53828
100	−164.84010	23.54992
101	−164.84847	23.56805
102	−164.84022	23.59032
103	−164.83507	23.60223
104	−164.82699	23.61034
105	−164.82082	23.61684
106	−164.80231	23.62265
107	−164.79438	23.62265
108	−164.76970	23.62170
109	−164.76123	23.62470
110	−164.74668	23.62929
111	−164.72141	23.63890
112	−164.69989	23.64668
113	−164.69637	23.64884
114	−164.68168	23.65276
115	−164.62967	23.66304
116	−164.62570	23.66372
117	−164.60491	23.66058
118	−164.58332	23.65788
119	−164.57670	23.65626
120	−164.56260	23.64801
121	−164.55305	23.64260
122	−164.55023	23.63696
123	−164.54332	23.62574

TABLE 9—COORDINATES FOR NIHOA ISLAND SPA

Point No.	Longitude	Latitude
1	−161.85602	23.06825
2	−161.85586	23.06145
3	−161.85681	23.05444
4	−161.85854	23.04933
5	−161.86360	23.03839
6	−161.86786	23.03182
7	−161.87322	23.02583
8	−161.88254	23.01897
9	−161.89754	23.01138
10	−161.91456	23.00813
11	−161.91743	23.00758
12	−161.93400	23.00846
13	−161.94876	23.01210
14	−161.95413	23.01502
15	−161.95873	23.01760
16	−161.96534	23.02130
17	−161.97875	23.03532
18	−161.98075	23.03875
19	−161.98502	23.04586
20	−161.98748	23.05667
21	−161.98809	23.06216
22	−161.98748	23.07391
23	−161.98297	23.08604
24	−161.97743	23.09476
25	−161.97071	23.10243
26	−161.96076	23.11031
27	−161.94498	23.11717
28	−161.92966	23.12052
29	−161.91767	23.12081
30	−161.90064	23.11819
31	−161.90062	23.11819
32	−161.88846	23.11323
33	−161.87906	23.10751
34	−161.86691	23.09642
35	−161.86217	23.08883

TABLE 9—COORDINATES FOR NIHOA ISLAND SPA—Continued

Point No.	Longitude	Latitude
36	−161.85933	23.08270
37	−161.85665	23.07424
38	−161.85602	23.06825

Appendix E to Subpart W of Part 922—Coordinates for the Ship Reporting Area

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

The boundaries for the areas listed in this appendix, unless otherwise described in this rule, begin at Point 1 as indicated in the particular area's coordinate table and continue to each successive point in numerical order until ending at the last point in the table.

TABLE 1—COORDINATES FOR THE REPORTING AREA OUTER BOUNDARY

Point No.	Longitude	Latitude
1	−178.28283	29.42450
2	−175.23067	28.72883
3	−173.42967	27.01283
4	−171.46783	26.74850
5	−170.34317	26.40383
6	−167.53500	25.94050
7	−165.97817	24.83667
8	−161.94767	24.09200
9	−161.94367	24.08817
10	−161.85883	24.07283
11	−161.77417	24.05733
12	−161.68983	24.04017
13	−161.60583	24.02183
14	−161.52583	23.99467
15	−161.44750	23.96417
16	−161.37183	23.92567
17	−161.29867	23.88267
18	−161.22867	23.83533
19	−161.16800	23.78233
20	−161.10783	23.72483
21	−161.05150	23.66183
22	−161.00233	23.59533
23	−160.95767	23.52650
24	−160.92050	23.45533
25	−160.89517	23.37900
26	−160.86950	23.30483
27	−160.85067	23.22617
28	−160.84100	23.14467
29	−160.83617	23.06167
30	−160.83917	22.97783
31	−160.85067	22.89733
32	−160.87000	22.81850
33	−160.89267	22.74100
34	−160.92533	22.66717
35	−160.96133	22.59550
36	−161.00417	22.52567
37	−161.05383	22.45950
38	−161.11067	22.39600
39	−161.17050	22.33733
40	−161.23550	22.28367
41	−161.30567	22.23400
42	−161.38000	22.18917
43	−161.45750	22.15317
44	−161.53517	22.12150
45	−161.61567	22.09783
46	−161.69817	22.07700

TABLE 1—COORDINATES FOR THE REPORTING AREA OUTER BOUNDARY—Continued

Point No.	Longitude	Latitude
47	−161.78483	22.06567
48	−161.87267	22.05683
49	−161.95850	22.05683
50	−162.04717	22.06367
51	−162.13400	22.07483
52	−162.21867	22.09050
53	−162.27350	22.09950
54	−162.28083	22.10483
55	−164.78783	22.57617
56	−166.63717	22.79333
57	−168.46517	24.06367
58	−170.75650	24.42933
59	−171.88383	24.77567
60	−174.47850	25.12667
61	−176.59183	27.09700
62	−178.64433	27.45533
63	−178.72600	27.48217
64	−178.80667	27.51067
65	−178.88267	27.54567
66	−178.95500	27.58433
67	−179.02483	27.63150
68	−179.09333	27.68167
69	−179.15683	27.73617
70	−179.21417	27.79567
71	−179.26667	27.85750
72	−179.31367	27.92200
73	−179.35217	27.98883
74	−179.38583	28.05817
75	−179.41267	28.13033
76	−179.43633	28.20517
77	−179.45083	28.28250
78	−179.46050	28.36017
79	−179.46283	28.43633
80	−179.45800	28.51450
81	−179.44917	28.59350
82	−179.42917	28.66817
83	−179.40517	28.74100
84	−179.37500	28.81167
85	−179.34050	28.88017
86	−179.29617	28.94517
87	−179.24867	29.00967
88	−179.19483	29.06967
89	−179.13667	29.12700
90	−179.07283	29.18100
91	−179.00350	29.22933
92	−178.92967	29.27067
93	−178.85433	29.30850
94	−178.77500	29.34083
95	−178.69450	29.37100
96	−178.61067	29.39200
97	−178.52567	29.40883
98	−178.43850	29.41933
99	−178.34867	29.42367
100	−178.27833	29.42150
101	−178.28283	29.42450

TABLE 2—COORDINATES OF THE INNER REPORTING AREA BOUNDARY AROUND HŌLANIKŪ (KURE ATOLL), KUAIHELANI (MIDWAY ATOLL), MANAWAI (PEARL AND HERMES ATOLL) AREA TO BE AVOIDED (ATBA)

Point No.	Longitude	Latitude
1	−175.78700	27.01217

TABLE 2—COORDINATES OF THE INNER REPORTING AREA BOUNDARY AROUND HŌLANIKŪ (KURE ATOLL), KUAIHELANI (MIDWAY ATOLL), MANAWAI (PEARL AND HERMES ATOLL) AREA TO BE AVOIDED (ATBA)—Continued

Point No.	Longitude	Latitude
2	−175.87900	27.01133
3	−175.96933	27.01817
4	−176.05883	27.03317
5	−176.14683	27.05567
6	−176.23183	27.08533
7	−176.31317	27.12283
8	−176.39000	27.16633
9	−176.46233	27.21700
10	−176.47833	27.22950
11	−176.49783	27.24600
12	−177.55517	27.41583
13	−178.49833	27.59783
14	−178.56550	27.61067
15	−178.62200	27.62550
16	−178.67750	27.64333
17	−178.73167	27.66417
18	−178.78417	27.68800
19	−178.83500	27.71483
20	−178.88383	27.74433
21	−178.93050	27.77650
22	−178.97483	27.81117
23	−179.01667	27.84817
24	−179.05650	27.88700
25	−179.09350	27.92817
26	−179.12683	27.97150
27	−179.15783	28.01683
28	−179.18500	28.06350
29	−179.20883	28.11183
30	−179.22917	28.16117
31	−179.24583	28.21167
32	−179.25900	28.26300
33	−179.26850	28.31517
34	−179.27417	28.36733
35	−179.27600	28.41200
36	−179.27617	28.42000
37	−179.27600	28.43017
38	−179.27400	28.47250
39	−179.26833	28.52483
40	−179.25900	28.57683
41	−179.24583	28.62817
42	−179.22900	28.67850
43	−179.20900	28.72800
44	−179.18550	28.77633
45	−179.15867	28.82317
46	−179.12833	28.86850
47	−179.09500	28.91200
48	−179.05850	28.95350
49	−179.01917	28.99300
50	−178.97700	29.03017
51	−178.93217	29.06500
52	−178.88500	29.09717
53	−178.83550	29.12667
54	−178.78400	29.15350
55	−178.73067	29.17733
56	−178.67567	29.19817
57	−178.61933	29.21583
58	−178.56183	29.23033
59	−178.50350	29.24167
60	−178.44433	29.24983
61	−178.38467	29.25467
62	−178.32483	29.25600
63	−178.26500	29.25417
64	−178.20533	29.24900
65	−178.14633	29.24050
66	−177.20117	29.05783

TABLE 2—COORDINATES OF THE INNER REPORTING AREA BOUNDARY AROUND HŌLANIKŪ (KURE ATOLL), KUAIHELANI (MIDWAY ATOLL), MANAWAI (PEARL AND HERMES ATOLL) AREA TO BE AVOIDED (ATBA)—Continued

Point No.	Longitude	Latitude
67	−177.12150	29.04250
68	−175.59117	28.64933
69	−175.57250	28.64450
70	−175.32900	28.58183
71	−175.17750	28.43733
72	−175.14917	28.41017
73	−175.15067	28.40883
74	−175.08183	28.33483
75	−175.03200	28.26750
76	−174.98883	28.19633
77	−174.95383	28.12150
78	−174.92800	28.04383
79	−174.91033	27.96400
80	−174.90083	27.88350
81	−174.90083	27.80200
82	−174.91033	27.72133
83	−174.92850	27.64133
84	−174.95533	27.56350
85	−174.99050	27.48833
86	−175.03383	27.41667
87	−175.08450	27.34883
88	−175.14317	27.28633
89	−175.20783	27.22883
90	−175.27783	27.17650
91	−175.35417	27.13133
92	−175.43483	27.09283
93	−175.51917	27.06100
94	−175.60667	27.03700
95	−175.69633	27.02150
96	−175.78700	27.01217

TABLE 3—COORDINATES FOR THE INNER REPORTING AREA BOUNDARY AROUND ʻŌNŪI AND ʻŌNUIKI (GARDNER PINNACLES), LALO (FRENCH FRIGATE SHOALS), MOKUMANAMANA (NECKER) ATBA

Point No.	Longitude	Latitude
1	−168.00150	25.83633
2	−167.87767	25.82733
3	−167.87750	25.82833
4	−167.80583	25.81650
5	−167.61200	25.78483
6	−167.44133	25.66400
7	−167.32983	25.58500
8	−166.75000	25.17383
9	−166.05600	24.68183
10	−165.58317	24.59400
11	−164.51867	24.39633
12	−164.51900	24.39317
13	−164.49567	24.38850
14	−164.40867	24.36417
15	−164.32317	24.33500
16	−164.24267	24.29583
17	−164.16617	24.24983
18	−164.09483	24.19767
19	−164.03000	24.13833
20	−163.97050	24.07467
21	−163.92033	24.00450
22	−163.87650	23.93083
23	−163.84267	23.85283

TABLE 3—COORDINATES FOR THE INNER REPORTING AREA BOUNDARY AROUND ʻŌNŪI AND ʻŌNUIKI (GARDNER PINNACLES), LALO (FRENCH FRIGATE SHOALS), MOKUMANAMANA (NECKER) ATBA—Continued

Point No.	Longitude	Latitude
24	−163.81633	23.77217
25	−163.79983	23.68950
26	−163.79267	23.60567
27	−163.79333	23.52117
28	−163.80467	23.43783
29	−163.82500	23.35567
30	−163.85233	23.27550
31	−163.89117	23.19933
32	−163.93583	23.12567
33	−163.98967	23.05767
34	−164.05017	22.99417
35	−164.11833	22.93783
36	−164.19150	22.88700
37	−164.26967	22.84333
38	−164.35267	22.80800
39	−164.43800	22.77883
40	−164.52667	22.75817
41	−164.61717	22.74717
42	−164.70850	22.74417
43	−164.79983	22.74867
44	−164.82533	22.75183
45	−164.85800	22.75650
46	−164.85883	22.75283
47	−165.58317	22.83767
48	−166.32717	22.92500
49	−166.38867	22.93217
50	−166.60000	22.95683
51	−166.75000	23.06250
52	−166.79083	23.09133
53	−168.38100	24.21167
54	−168.37967	24.21467
55	−168.45467	24.26750
56	−168.52767	24.31917
57	−168.59917	24.37117
58	−168.66567	24.42850
59	−168.72583	24.49183
60	−168.77717	24.56117
61	−168.82150	24.63433
62	−168.85767	24.71133
63	−168.88533	24.79083
64	−168.90467	24.87233
65	−168.91367	24.95533
66	−168.91583	25.03867
67	−168.90717	25.12167
68	−168.88867	25.20317
69	−168.86267	25.28317
70	−168.82667	25.35950
71	−168.78217	25.43233
72	−168.73100	25.50150
73	−168.67367	25.56483
74	−168.60867	25.62283
75	−168.53733	25.67483
76	−168.46133	25.72067
77	−168.38033	25.75950
78	−168.29600	25.79050
79	−168.20783	25.81317
80	−168.11817	25.82867
81	−168.02700	25.83517
82	−168.00150	25.83633

TABLE 4—COORDINATES FOR INNER REPORTING AREA BOUNDARY AROUND THE KAPOU (LISIANSKI ISLAND), KAMOLE (LAYSAN ISLAND), KAMOKUOKAMOHOALIʻI (MARO REEF), RAITA BANK ATBA

Point No.	Longitude	Latitude
1	−173.56150	26.85217
2	−173.51450	26.84583
3	−173.51317	26.84817
4	−171.62833	26.60000
5	−171.56400	26.59150
6	−171.51400	26.58500
7	−171.45833	26.56783
8	−171.41933	26.55583
9	−170.38400	26.23767
10	−169.81600	26.14483
11	−169.81717	26.13933
12	−169.76383	26.12700
13	−169.67617	26.10050
14	−169.59400	26.06617
15	−169.51517	26.02517
16	−169.44083	25.97750
17	−169.37233	25.92200
18	−169.31000	25.86117
19	−169.25317	25.79633
20	−169.20567	25.72567
21	−169.16550	25.65083
22	−169.13467	25.57283
23	−169.11267	25.49233
24	−169.09883	25.41017
25	−169.09400	25.32717
26	−169.09883	25.24417
27	−169.11100	25.16150
28	−169.13367	25.08083
29	−169.16600	25.00283
30	−169.20583	24.92767
31	−169.25233	24.85583
32	−169.30800	24.78950
33	−169.37033	24.72817
34	−169.43850	24.67233
35	−169.51300	24.62367
36	−169.59400	24.58333
37	−169.67767	24.55033
38	−169.76467	24.52233
39	−169.85133	24.50517
40	−169.94217	24.49467
41	−170.03017	24.49267
42	−170.07617	24.49350
43	−170.73983	24.59617
44	−170.79300	24.60483
45	−170.83950	24.61967
46	−170.86950	24.62933
47	−171.83650	24.93717
48	−174.41400	25.27683
49	−174.64083	25.49267
50	−174.70050	25.55467
51	−174.75333	25.62217
52	−174.79733	25.69467
53	−174.83417	25.77050
54	−174.86283	25.84883
55	−174.88183	25.93000
56	−174.89117	26.01183
57	−174.89350	26.09450
58	−174.88450	26.17650
59	−174.86800	26.25767
60	−174.84283	26.33667
61	−174.80733	26.41250
62	−174.76567	26.48583
63	−174.71600	26.55433
64	−174.65817	26.61850
65	−174.59383	26.67667
66	−174.52383	26.72917

TABLE 4—COORDINATES FOR INNER REPORTING AREA BOUNDARY AROUND THE KAPOU (LISIANSKI ISLAND), KAMOLE (LAYSAN ISLAND), KAMOKUOKAMOHOALIʻI (MARO REEF), RAITA BANK ATBA—Continued

Point No.	Longitude	Latitude
67	−174.44783	26.77483
68	−174.36817	26.81500
69	−174.28383	26.84650
70	−174.19650	26.87000
71	−174.10717	26.88683
72	−174.01633	26.89567
73	−173.92467	26.89567
74	−173.83367	26.88817
75	−173.74300	26.87600
76	−173.65233	26.86417
77	−173.56150	26.85217

TABLE 5—COORDINATES FOR THE INNER REPORTING AREA BOUNDARY AROUND NIHOA ATBA

Point No.	Longitude	Latitude
1	−161.78483	23.88033
2	−161.74450	23.87317
3	−161.74233	23.88033
4	−161.68667	23.86833
5	−161.63200	23.85300
6	−161.57850	23.83467
7	−161.52633	23.81317
8	−161.47583	23.78883
9	−161.42700	23.76150
10	−161.38017	23.73133
11	−161.33550	23.69867
12	−161.29333	23.66333
13	−161.25350	23.62567
14	−161.21650	23.58567
15	−161.18217	23.54367
16	−161.15083	23.49983
17	−161.12250	23.45417
18	−161.09750	23.40700
19	−161.07567	23.35850
20	−161.05717	23.30867
21	−161.04217	23.25800
22	−161.03067	23.20650
23	−161.02250	23.15450
24	−161.01817	23.10217
25	−161.01717	23.04950
26	−161.01983	22.99700
27	−161.02617	22.94483
28	−161.03583	22.89300
29	−161.04917	22.84183
30	−161.06583	22.79167
31	−161.08583	22.74250
32	−161.10900	22.69450
33	−161.13550	22.64800
34	−161.16500	22.60317
35	−161.19750	22.56017
36	−161.23283	22.51900
37	−161.27083	22.48017
38	−161.31150	22.44350
39	−161.35433	22.40933
40	−161.39950	22.37767
41	−161.44667	22.34867
42	−161.49567	22.32250
43	−161.54633	22.29917
44	−161.59833	22.27883
45	−161.65167	22.26167

TABLE 5—COORDINATES FOR THE INNER REPORTING AREA BOUNDARY AROUND NIHOA ATBA—Continued

Point No.	Longitude	Latitude
46	−161.70617	22.24750
47	−161.76133	22.23667
48	−161.81717	22.22883
49	−161.87350	22.22450
50	−161.93000	22.22333
51	−161.98633	22.22550
52	−162.04250	22.23083
53	−162.09083	22.23850
54	−162.09817	22.23950
55	−162.11467	22.24317
56	−162.20300	22.26450
57	−162.28850	22.29500
58	−162.37000	22.33283
59	−162.44733	22.37883
60	−162.51917	22.43133

TABLE 5—COORDINATES FOR THE INNER REPORTING AREA BOUNDARY AROUND NIHOA ATBA—Continued

Point No.	Longitude	Latitude
61	−162.58483	22.49017
62	−162.64350	22.55467
63	−162.69533	22.62450
64	−162.73900	22.69883
65	−162.77450	22.77717
66	−162.80083	22.85800
67	−162.81817	22.94100
68	−162.82633	23.02500
69	−162.82483	23.10967
70	−162.81483	23.19350
71	−162.79500	23.27617
72	−162.76633	23.35600
73	−162.72917	23.43367
74	−162.68350	23.50667
75	−162.63050	23.57517

TABLE 5—COORDINATES FOR THE INNER REPORTING AREA BOUNDARY AROUND NIHOA ATBA—Continued

Point No.	Longitude	Latitude
76	−162.56967	23.63767
77	−162.50300	23.69483
78	−162.42983	23.74533
79	−162.35183	23.78933
80	−162.26933	23.82583
81	−162.18317	23.85400
82	−162.09383	23.87400
83	−162.00417	23.88567
84	−161.91250	23.88933
85	−161.82133	23.88483
86	−161.78483	23.88033

Appendix F to Subpart W of Part 922—IMO Standard Reporting Format and Data Syntax for Ship Reporting System

Telegraphy	Function	Information required	Example field text
	System identifier	CORAL SHIPREP //	CORAL SHIPREP //
A	Ship	Vessel name/call sign/flag/IMO number/Federal documentation or State registration number if applicable //.	A/OCEAN VOYAGER/C5FU8/BAHAMAS/IMO 9359165/
B	Date, time (UTC), and month of entry.	A 6-digit group giving day of month (first two digits), hours and minutes (last four digits) in coordinated universal time, suffixed by the letter Z (indicating time in UTC), and three letters indicating month //.	B/271107Z DEC//
C	Position	A 4-digit group giving latitude in degrees and minutes, suffixed with the letter N (indicating north), followed by a single /, and a five-digit group giving longitude in degrees and minutes, suffixed with the letter W (indicating west) // [Report in the World Geodetic System 1984 Datum (WGS–84)].	C/2728N/17356W//
E	True course	3 digit number indicating true course	E/180//
F	Speed in knots and tenths.	3-digit group indicating knots decimal tenths //	F/20.5//
I	Destination and estimated time of arrival.	Name of port city/country/estimated arrival date and time group expressed as in (B) //.	I/SEATTLE/USA/311230Z DEC//
L	Intended route through the reporting area.	Route information should be reported as a direct rhumbline (RL) course through the reporting area and intended speed (expressed as in E and F) or a series of waypoints (WP). Each waypoint entry should be reported as latitude and longitude, expressed as in (C), and intended speed between waypoints (as in F) // (*Note:* As many ''L'' lines as needed may be used to describe the vessel's intended route.).	L/RL/215/20.5// -OR- L/WP/2734N/17352W/20.5// L/WP/2641N/17413W/20.5// L/WP/2605N/17530W/20.5//
O	Vessel draft in meters.	Maximum present static draft reported in meters decimal centimeters //.	O/11.50//
P	Categories of Hazardous Cargoes*.	Classification Code (e.g., IMDG, IBC, IGC, INF) / and all corresponding Categories of Hazardous Cargoes (delimited by commas) // *Note:* If necessary, use a separate ''P'' line for each type of Classification Code.	P/IMDG/1.4G,2.1,2.2,2.3,3,4.1,6.1,8,9//
Q	Defects or deficiencies**.	Brief details of defects, damage, deficiencies or limitations that restrict maneuverability or impair normal navigation // (If none, enter the number zero.).	Q/Include details as required//
R	Pollution incident or goods lost overboard**.	Description of pollution incident or goods lost overboard within the Monument, the Reporting Area, or the U.S. Exclusive Economic Zone// (If none, enter the number zero.).	R/0//
T	Contact information of ship's agent or owner.	Name/address/and phone number of ship's agent or owner //.	T/JOHN DOE/GENERIC SHIPPING COMPANY INC, 6101 ACME ROAD, ROOM 123, CITY, STATE, COUNTRY 12345/123–123–1234//
U	Ship size (length overall and gross tonnage) and type.	Length overall reported in meters decimal centimeters/ number of gross tons/type of ship (e.g. bulk carrier, chemical tanker, oil tanker, gas tanker, container, general cargo, fishing vessel, research, passenger, OBO, RORO) //.	U/294.14/54592/CONTAINER SHIP//
W	Persons	Total number of persons on board //	W/15//

TABLE NOTES

*Categories of hazardous cargoes means goods classified in the International Maritime Dangerous Goods (IMDG) Code; substances classified in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) and chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code); oils as defined in MARPOL Annex I; noxious liquid substances as defined in MARPOL Annex II; harmful substances as defined in MARPOL Annex III; and radioactive materials specified in the Code for the Safe Carriage of the Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes in Flasks on Board Ships (INF Code).

** In accordance with the provisions of the MARPOL Convention, ships must report information relating to defects, damage, deficiencies or other limitations as well as, if necessary, information relating to pollution incidents or loss of cargo. Safety related reports must be provided to CORAL SHIPREP without delay should a ship suffer damage, failure or breakdown affecting the safety of the ship (Item Q), or if a ship makes a marked deviation from a route, course or speed previously advised (Item L). Pollution or cargo lost overboard must be reported without delay (Item R).

[FR Doc. 2024–03820 Filed 2–29–24; 8:45 am]

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Part III

Commodity Futures Trading Commission

17 CFR Parts 1, 22 et al.

Regulations To Address Margin Adequacy and To Account for the Treatment of Separate Accounts by Futures Commission Merchants; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 22, 30, and 39

RIN 3038–AF21

Regulations To Address Margin Adequacy and To Account for the Treatment of Separate Accounts by Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: On April 14, 2023, the Commodity Futures Trading Commission (Commission or CFTC) published a notice of proposed rulemaking (First Proposal) that proposed to amend the derivatives clearing organization (DCO) risk management regulations adopted under the Commodity Exchange Act (CEA) to permit futures commission merchants (FCMs) that are clearing members of DCOs (clearing FCMs), subject to specified requirements, to treat separate accounts of a single customer as accounts of separate legal entities for purposes of certain Commission regulations. In light of comments received supporting direct application of separate account treatment requirements to FCMs in the Commission's regulations, the Commission has determined to withdraw the First Proposal. The Commission now proposes regulations to require an FCM to ensure that a customer does not withdraw funds from its account with the FCM if the balance in such account after such withdrawal would be insufficient to meet the customer's initial margin requirements, and relatedly, to permit an FCM, in certain circumstances and subject to certain conditions, to treat the separate accounts of a single customer as accounts of separate entities for purposes of certain Commission regulations (Second Proposal). The proposed amendments would establish the conditions under which an FCM may engage in such separate account treatment.

DATES: Comments must be received on or before April 22, 2024.

ADDRESSES: You may submit comments, identified by RIN 3038–AF21, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations. The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the proposed determination and order will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Chief Counsel, 202–418–5092, *rwasserman@cftc.gov;* Daniel O'Connell, Special Counsel, 202–418–5583, *doconnell@cftc.gov,* Division of Clearing and Risk; Thomas Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Joshua Beale, Associate Director, 202–418–5446, *jbeale@cftc.gov;* Jennifer Bauer, Special Counsel, 202–418–5472, *jbauer@cftc.gov,* Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. The Commission's Customer Funds Protection Regulations [1]

Two of the fundamental purposes of the CEA are the avoidance of systemic risk and the protection of market participants from misuses of customer assets.[2] The Commission has promulgated a number of regulations in furtherance of those objectives, including regulations designed to ensure that FCMs appropriately margin customer accounts, and are not induced to cover one customer's margin shortfall with another customer's funds. In addition to protecting customer assets, the current regulations serve the purpose of avoidance of systemic risk by mitigating the risk that a customer default in its obligations to a clearing FCM results in the clearing FCM in turn defaulting on its obligations to a DCO, which could adversely affect the stability of the broader financial system.

Section 4d(a)(2) of the CEA and Commission regulation § 1.20(a) require an FCM to separately account for and segregate from its own funds all money, securities, and property which it has

[1] For purposes of completeness and explanation of the basis for this Second Proposal, the Commission restates its explanation of its customer funds protection regulations, as stated in the First Proposal. *See* Derivatives Clearing Organization Risk Management Regulations to Account for the Treatment of Separate Accounts by Futures Commission Merchants, 88 FR 22934, 22935–22936 (Apr. 14, 2023) (First Proposal).

[2] Section 3(b) of the CEA, 7 U.S.C. 5(b).

received to margin, guarantee, or secure the trades or contracts of its commodity customers.[3] Additionally, section 4d(a)(2) of the CEA and Commission regulation § 1.22(a) prohibit an FCM from using the money, securities, or property of one customer to margin or settle the trades or contracts of another customer.[4] This requirement is designed to prevent disparate treatment of customers by an FCM and mitigate the risk that there will be insufficient funds in segregation to pay all customer claims if the FCM becomes insolvent.[5] Section 4d(a)(2) of the CEA and regulations §§ 1.20 and 1.22 effectively require an FCM to add its own funds into segregation in an amount equal to the sum of all customer undermargined amounts, including customer account deficits, to prevent the FCM from being induced to use one customer's funds to margin or carry another customer's trades or contracts.[6]

Section 5b of the CEA,[7] as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,[8] sets forth eighteen core principles with which DCOs must comply to register and maintain registration as DCOs with the Commission. In 2011, the Commission adopted regulations for DCOs to implement Core Principle D, which concerns risk management.[9] These regulations include a number of provisions that require a DCO to in turn require that its clearing members take certain steps to support their own risk management in order to mitigate the risk that such clearing members pose to the DCO.

Specifically, Commission regulation § 39.13(g)(8)(iii) provides that a DCO shall require an FCM clearing member to ensure that a customer does not withdraw funds from its account with such clearing member unless the net liquidating value plus the margin deposits remaining in the customer's account after the withdrawal would be sufficient to meet the customer initial margin requirements with respect to the products or portfolios in the customer's account, which are cleared by the DCO.[10] Regulation § 39.13(g)(8)(iii) thus establishes a ''Margin Adequacy Requirement,'' designed to mitigate the risk that an FCM clearing member fails to hold, from a customer, funds sufficient to cover the required initial margin for the customer's cleared positions.[11] In light of the use of omnibus margin accounts, where the funds of multiple customers are held together, this safeguard is necessary to ''avoid the misuse of customer funds'' [12] by mitigating the likelihood that the clearing member will effectively cover one customer's margin shortfall using another customer's funds.

In adopting the Margin Adequacy Requirement of regulation § 39.13(g)(8)(iii), the Commission stated [13] that the regulation was consistent with the definition of ''Margin Funds Available for Disbursement'' in the Margins Handbook [14] prepared by the Joint Audit Committee (JAC), a representative committee of U.S. futures exchanges and the National Futures Association (NFA).[15] The Commission noted that while designated self-regulatory organizations (DSROs) reviewed FCMs to determine whether they appropriately prohibited their customers from withdrawing funds from their futures accounts, it was unclear to what extent that requirement applied to cleared swap accounts when such swaps were executed on a designated contract market (DCM) that participated in the JAC.[16] The Commission also noted that clearing members that cleared only swaps that were executed on a swap execution facility were not subject to the requirements of the JAC Margins Handbook or review by a DSRO.[17]

Thus, regulation § 39.13(g)(8)(iii) was also designed to apply these risk mitigation and customer protection standards to futures and swap positions carried in customer accounts by clearing FCMs. However, Commission regulations do not apply a Margin Adequacy Requirement to non-clearing FCMs, and regulation § 39.13(g)(8)(iii) does not require DCOs to apply that requirement to the positions carried by a clearing FCM that are not cleared at a registered DCO (*e.g.,* most foreign futures and foreign option positions).[18]

B. The Divisions' No-Action Position [19]

On July 10, 2019, the Division of Swap Dealer and Intermediary Oversight (DSIO) (now Market Participants Division (MPD)) and the Division of Clearing and Risk (DCR) (collectively, the Divisions) published CFTC Letter No. 19–17, which, among other things, provides guidance with respect to the processing of margin withdrawals under regulation § 39.13(g)(8)(iii) and announced a conditional and time-limited no-action position for certain such withdrawals.[20] The advisory followed discussions with and written representations from the Asset Management Group of the Securities Industry and Financial Markets Association (SIFMA–AMG), the Chicago Mercantile Exchange (CME), the Futures Industry Association (FIA), the JAC, and several FCMs, regarding practices among FCMs and their customers related to the handling of separate accounts of the same

[3] 7 U.S.C. 6d(a)(2); 17 CFR 1.20(a).

[4] 7 U.S.C. 6d(a)(2); 17 CFR 1.22(a).

[5] Prohibition of Guarantees Against Loss, 46 FR 11668, 11669 (Feb. 10, 1981).

[6] 7 U.S.C. 6d(a)(2); 17 CFR 1.20; 17 CFR 1.22; Prohibition of Guarantees Against Loss, 46 FR at 11669.

[7] 7 U.S.C. 7a–1(b).

[8] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[9] Section 5b(c)(2)(D) of the CEA, 7 U.S.C. 7a–1(c)(2)(D); Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69335 (Nov. 8, 2011).

[10] 17 CFR 39.13(g)(8)(iii).

[11] For purposes of this proposed rulemaking, the Commission uses the term ''Margin Adequacy Requirement'' to refer to this requirement, which applies indirectly to clearing FCMs via the operation of DCO rules, and the analogous requirement set forth in proposed regulation § 1.44(b) which would apply directly to all FCMs.

[12] Section 3(b) of the CEA, 7 U.S.C. 5(b).

[13] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69379.

[14] JAC Margins Handbook, available at *http://www.jacfutures.com/jac/MarginHandBookWord.aspx.*

[15] Joint Audit Committee, JAC Members, available at *http://www.jacfutures.com/jac/Members.aspx.* Self-regulatory organizations, such as commodity exchanges and registered futures associations (*e.g.,* NFA), enforce minimum financial and reporting requirements, among other responsibilities, for their members. *See* Commission regulation § 1.3, 17 CFR 1.3. Pursuant to Commission regulation § 1.52(d), when an FCM is a member of more than one self-regulatory organization, the self-regulatory organizations may decide among themselves which of them will assume primary responsibility for these regulatory duties and, upon approval of such a plan by the Commission, the self-regulatory organization assuming such primary responsibility will be appointed the designated self-regulatory organization for the FCM. 17 CFR 1.52(d).

[16] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69379.

[17] *Id.*

[18] The term ''foreign futures'' means any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade. 17 CFR 30.1(a). The term ''foreign option'' means any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an ''option'', ''privilege'', ''indemnity'', ''bid'', ''offer'', ''put'', ''call'', ''advance guaranty'' or ''decline guaranty'', made or to be made on or subject to the rules of any foreign board of trade. 17 CFR 30.1(b).

[19] For purposes of completeness and explanation of the basis for this Second Proposal, the Commission restates its explanation of the no-action position contained in CFTC Letter No. 19–17, as stated in the First Proposal. *See* First Proposal, 88 FR 22936–22937.

[20] CFTC Letter No. 19–17, July 10, 2019, available at *https://www.cftc.gov/csl/19-17/download* as extended by CFTC Letter No. 20–28, Sept. 15, 2020, available at *https://www.cftc.gov/csl/20-28/download;* CFTC Letter No. 21–29, Dec. 21, 2021, available at *https://www.cftc.gov/csl/21-29/download;* and CFTC Letter No. 22–11, Sept. 15, 2022, available at *https://www.cftc.gov/csl/22-11/download;* CFTC Letter No. 23–13, Sept. 11, 2023, available at *https://www.cftc.gov/csl/23-13/download.*

customer.[21] CFTC Letter No. 19–17 used the term ''beneficial owner'' synonymously with the term ''customer,'' as ''beneficial owner'' was, in this context, commonly used to refer to the customer that is financially responsible for an account. Additionally, as discussed further below, in the customer relationship context, FCMs often deal directly with a commodity trading advisor acting as an agent of the customer rather than the customer itself. For the avoidance of confusion (*e.g.,* with regard to the terms ''owner'' or ''ownership,'' as those terms are used in Forms 40 and 102, or parts 17–20, or with regard to the term ''beneficial owner,'' as that term may be used by other agencies), this proposed rulemaking uses only the term ''customer,'' except where directly quoting or paraphrasing a source that uses ''beneficial owner.''

The written representations preceding the issuance of CFTC Letter No. 19–17 included letters filed separately by SIFMA–AMG, CME, and FIA (collectively, the ''Industry Letters'').[22] Citing regulation § 39.13(g)(8)(iii)'s requirements related to the withdrawal of customer initial margin, and JAC Regulatory Alert #19–02 reminding FCMs of those requirements,[23] SIFMA–AMG and FIA explained that provisions in certain FCM customer agreements provide that certain accounts carried by the FCM that have the same customer are treated as accounts for different legal entities (*i.e.,* ''separate accounts'').[24]

As FIA explained, there are a variety of reasons why a customer may want separate treatment for its accounts under such an agreement.[25] For instance, an institutional customer, such as an investment or pension fund, may allocate assets to investment managers under investment management agreements that require each investment manager to invest a specified portion of the customer's assets under management in accordance with an agreed trading strategy, independent of the trading that may be undertaken for the customer by the same or other investment managers acting on behalf of other accounts of the customer.[26] In such a situation, an investment manager may, in order to implement its trading strategy effectively, want assurance that the portion of funds it has been allocated to manage is entirely available to the investment manager, and will not be affected by the activities of other investment managers who manage other portions of the customer's assets and maintain separate accounts at the same FCM. Additionally, a commercial enterprise may establish separate agreements to leverage specific broker expertise on products or to diversify risk management strategies.[27] In such cases, each separate account may be subject to a separate customer agreement, which the FCM negotiates directly with, in many cases, the customer's agent, which often will be an investment manager.[28]

SIFMA–AMG and FIA asserted that, subject to appropriate FCM internal controls and procedures, separate accounts should be treated as separate legal entities for purposes of regulation § 39.13(g)(8)(iii); *i.e.,* separate accounts should not be combined when determining an account's margin funds available for disbursement.[29] SIFMA–AMG and FIA maintained that such separate account treatment should not be expected to expose an FCM to any greater regulatory or financial risk, and asserted that an FCM's internal controls and procedures could be designed to assure that the FCM does not undertake any additional risk as to the separate account.[30] The Industry Letters included a number of examples of such controls and procedures.[31]

In its letter, SIFMA–AMG suggested that it would be possible to allow for separate account treatment without undermining the risk mitigation and customer protection goals of regulation § 39.13(g)(8)(iii).[32] SIFMA–AMG recognized that there may be some instances, such as a customer default, in which separate account treatment would no longer be appropriate.[33] SIFMA–AMG stated that an FCM could agree to first satisfy any amounts owed from agreed assets related to a separate account, and continue to release funds until the FCM provided the separate account with a notice of an event of default under the applicable clearing account agreement, and determined that it is no longer prudent to continue to separately margin the separate accounts, provided that such actions are consistent with the FCM's written internal controls and procedures.[34] SIFMA–AMG further stated that, in such instance, the FCM would retain the ability to ultimately look to funds in other accounts of the customer, including accounts under different control, and the right to call the customer for funds.[35] CME similarly asserted that disbursements on a separate account basis should not be permitted in certain circumstances, such as financial distress, that fall outside the ''ordinary course of business.'' [36] While CME asserted that the plain language of regulation § 39.13(g)(8)(iii) unambiguously forbids disbursements on a separate account basis, CME noted that it would be amenable to the Commission amending the regulation to permit such disbursements, subject to certain such risk-mitigating conditions.[37]

SIFMA–AMG and FIA requested that DCR confirm that it would not recommend that the Commission initiate an enforcement action against a DCO that permits its clearing FCMs to treat certain separate accounts of a customer as accounts of separate entities for purposes of regulation § 39.13(g)(8)(iii),[38] and confirm that a clearing FCM may release excess funds from a separate customer account notwithstanding an outstanding margin call in another account of the same customer.[39]

In CFTC Letter No. 19–17, DCR stated that, in the context of separate accounts, the risk management goals of regulation § 39.13(g)(8)(iii) may effectively be addressed if a clearing FCM carrying a customer with separate accounts meets certain conditions, which were derived from the Industry Letters and specified in CFTC Letter No. 19–17.[40] DCR stated that it would not recommend that the Commission take enforcement action against a DCO if the DCO permits its clearing FCMs to treat certain separate accounts as accounts of separate entities

[21] SIFMA–AMG letter dated June 7, 2019 to Brian A. Bussey and Matthew B. Kulkin (SIFMA–AMG Letter); CME letter dated June 14, 2019 to Brian A. Bussey and Matthew B. Kulkin (CME Letter); and FIA letter dated June 26, 2019 to Brian A. Bussey and Matthew B. Kulkin (First FIA Letter).

[22] The Commission notes that while CME disagreed with certain aspects of FIA's letter that fall beyond the scope of this rulemaking, CME's letter noted that CME was ''amenable to the Commission amending Rule 39.13(g)(8)(iii) to allow a DCO to permit a[n] FCM to release excess funds from a customer's separate account notwithstanding an outstanding margin call in another account of the same customer provided that certain specified risk-mitigating conditions . . . are satisfied.'' CME Letter.

[23] JAC, Regulatory Alert #19–02, May 14, 2019, available at *http://www.jacfutures.com/jac/jacupdates/2019/jac1902.pdf.*

[24] SIFMA–AMG Letter; First FIA Letter.

[25] First FIA Letter.

[26] *See id.*

[27] *Id.*

[28] *Cf. id.*

[29] SIFMA–AMG Letter; First FIA Letter.

[30] SIFMA–AMG Letter; First FIA Letter.

[31] SIFMA–AMG Letter; First FIA Letter; CME Letter.

[32] SIFMA–AMG Letter.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] CME Letter.

[37] *Id.*

[38] FIA specifically noted that such a no-action position could be conditioned on the FCM maintaining certain internal controls and procedures.

[39] SIFMA–AMG Letter; First FIA Letter; *see also* CME Letter.

[40] CFTC Letter No. 19–17.

for purposes of regulation § 39.13(g)(8)(iii) subject to these conditions.[41] The no-action position extended until June 30, 2021, in order to provide staff with time to recommend, and the Commission with time to determine whether to conduct and, if so, conduct, a rulemaking to implement a permanent solution.[42] CFTC Letter No. 20–28, published on September 15, 2020, extended the no-action position until December 31, 2021 due to challenges presented by the COVID–19 pandemic.[43] CFTC Letter No. 20–28 stated that if the process to consider codifying the no-action position provided for by CFTC Letter No. 19–17 was not completed by that date, DSIO and DCR would consider further extending the no-action position.[44] The Divisions published CFTC Letter No. 21–29, further extending the no-action position until September 30, 2022.[45] On September 15, 2022, the Divisions published CFTC Letter No. 22–11, which further extended the no-action position until the earlier of September 30, 2023 or the effective date of any final Commission action relating to regulation § 39.13(g).[46] As with CFTC Letter No. 21–29, this extension was issued in order to provide additional time for the Commission to consider a rulemaking. As discussed further below, while the Commission proposed a rulemaking to codify the no-action position in CFTC Letter No. 19–17, the Commission has determined to withdraw that proposed rulemaking in light of comments received and propose a new rulemaking in part 1 of its regulations to both impose a Margin Adequacy Requirement (as discussed herein) and simultaneously provide for separate account treatment. On September 11, 2023, the Divisions published CFTC Letter No. 23–13, extending the no-action position until the earlier of June 30, 2024 or the effective date of any final Commission action relating to regulation § 39.13(g),[47] to provide further time for staff to develop and for the Commission to consider the Second Proposal, and to receive and consider comments thereon and consider and adopt a final rule.

[41] *Id.*

[42] *Id.*

[43] CFTC Letter No. 20–28.

[44] *Id.*

[45] CFTC Letter No. 21–29.

[46] CFTC Letter No. 22–11.

[47] The Commission notes that this Second Proposal amends § 39.13(g) to refer to proposed regulation § 1.44.

C. The Commission's First Proposal and its Withdrawal

On April 14, 2023, the Commission published in the **Federal Register** a notice of proposed rulemaking—the First Proposal—designed to codify the no-action position in CFTC Letter No. 19–17.[48] The First Proposal proposed to amend regulation § 39.13 to add new paragraph (j) allowing a DCO to permit a clearing FCM to treat the separate accounts of customers as accounts of separate entities for purposes of regulation § 39.13(g)(8)(iii), if such clearing member's written internal controls and procedures permitted it to do so, and the DCO required its clearing members to comply with conditions specified in proposed regulation § 39.13(j).

The conditions for separate account treatment in proposed regulation § 39.13(j) were substantially similar to the conditions specified in CFTC Letter No. 19–17. However, certain conditions in proposed regulation § 39.13(j) reflected modification of the conditions in CFTC Letter No. 19–17 on which they were based. Such modifications included adding further reporting requirements for clearing members required to cease separate account treatment, an explicit process for clearing members to resume separate account treatment, and provisions designed to further clarify the requirement that separate accounts be on a one business day margin call.

The comment period for the First Proposal was extended once at the request of a commenter and closed on June 30, 2023.[49] The Commission received comments from twelve commenters.[50] While commenters generally supported codifying the no-action position in CFTC Letter No. 19–17, six commenters [51] contended that the Commission should codify the no-action position in its part 1 FCM regulations (where it would apply directly to all FCMs) rather than its part 39 DCO regulations (where it applies only to clearing FCMs, through the instrumentality of DCOs). Other commenters did not opine on whether the proposed codification should be in part 1 versus part 39.

The Commission originally proposed to codify the no-action position in CFTC Letter No. 19–17 in part 39 in order to hew closely to the operation of the no-action position: DCOs could choose to permit clearing FCMs to engage in separate account treatment, provided such clearing FCMs complied with certain conditions.

In its comment responding to the First Proposal, CME recommended codification in part 1 to extend the benefits of separate account treatment to all FCMs equally, whether or not they are clearing members of one or more DCOs.[52] CME asserted that codification in part 1 would eliminate the risk that a current or future DCO chooses not to permit separate account treatment, noting that CME's own clearing members have invested significant time and effort in conforming their policies, systems, and practices to comply with the no-action conditions and related JAC advisory notices.[53] As CME further contended, under the First Proposal, if one DCO chose not to permit separate account treatment, then an FCM would have to exclude contracts cleared through that DCO from its customers' separate accounts.[54] CME argued that this would likely make separate margining operationally infeasible, noting that the First Proposal acknowledged that an FCM's futures account for a customer includes all futures products that the FCM clears for the customer, and the initial margin requirement for the account would be the total of the initial margin the FCM charges the customer for each contract in the account, in each case regardless of the DCO at which the contracts are cleared.[55]

CME also asserted that the First Proposal would effectively create two sets of reporting requirements applicable only to those FCM clearing members who choose to implement separate account margining at one or more DCOs, with new reporting requirements that conflict with regulations in part 1 that require calculation of deficits across all accounts of a single beneficial owner.[56]

CME further asserted that codification in part 39 would create new burdens for DCOs related to conducting examinations for compliance and the composition of DCO Chief Compliance Officer (CCO) reports, and would allow

[48] First Proposal.

[49] Derivatives Clearing Organization Risk Management Regulations to Account for the Treatment of Separate Accounts by Futures Commission Merchants, 88 FR 39205 (June 15, 2023).

[50] American Council of Life Insurers (ACLI), CME, FIA, Intercontinental Exchange, Inc. (ICE), JAC, Managed Funds Association (MFA), NFA, SIFMA–AMG, Symphony Communications Services, LLC, and three individuals.

[51] CME, FIA, ICE, JAC, NFA, and SIFMA–AMG.

[52] CME Comment Letter.

[53] *Id.* (citing regulations §§ 1.17, 1.20 and 22.2).

[54] *Id.*

[55] *Id.*

[56] *Id.*

for disparate implementation by DCOs.[57] CME additionally opined that certain proposed requirements in the First Proposal were outside the scope of DCOs' risk management responsibilities and instead should be applied directly to FCMs.[58]

In its comment, FIA contended that rules that affect the obligations of FCMs should be set out in part 1, and, similar to CME, argued that, if the no-action position is codified in part 1, then non-clearing FCMs and FCMs that maintain 30.7 accounts for 30.7 customers pursuant to part 30 of the Commission's regulations would be able to provide consistent treatment to customers with the same enhanced risk management standards set forth in the no-action position.[59] FIA also asserted that codification in part 1 would allow an FCM to control whether enhanced standards and separate account treatment are offered to a specific customer, rather than requiring each DCO to manage and control whether separate account treatment is permitted.[60] FIA additionally contended that the terms and conditions under which separate account treatment should be permitted or prohibited is a decision that the Commission, rather than individual DCOs, should make.[61]

In its comment, ICE supported part 1 codification on the basis that the no-action conditions are mainly relevant to the operation of an FCM and its relationship with its customers, rather than the operation of a DCO.[62] ICE also argued that supervision of FCM compliance with requirements related to separate accounts would be more consistently applied if not done at the individual DCO level.[63] ICE noted that functions of supervision, examination, and surveillance of the relationship between FCMs and customers are typically performed by an FCM's DSRO under Commission regulation § 1.52, rather than by DCOs.[64] ICE further contended that it would be more efficient for an FCM to address issues related to separate account treatment with a single DSRO rather than each DCO of which it is a member, and that imposing on DCOs additional burden and costs of supervising separate account treatment conditions may disincentivize DCOs from permitting FCMs to engage in separate account treatment.[65]

In its comment, the JAC opined that conditions for separate account treatment should be stringent enough to mitigate to the maximum extent possible the additional risks to other customers of an FCM that separate account treatment presents, but noted that, in any case, part 39 DCO regulations do not fall under the JAC's self-regulatory organization surveillance authority.[66] Similar to CME, the JAC also asserted that the First Proposal lacked clarity regarding whether it contemplated bifurcated reporting requirements, because the First Proposal provided that a clearing FCM would need to calculate certain separate account customer balances for capital and segregation differently than under parts 1, 22, or 30, but did not include amendments to those regulations.[67] Thus, the JAC argued, it was unclear whether the JAC would continue to review and monitor an FCM's financial statements prepared in accordance with those regulations, while a DCO would monitor the FCM's different computations prepared in accordance with proposed regulation § 39.13(j).[68] The JAC also noted that the First Proposal did not provide for separate account treatment for non-clearing FCMs and Commission regulation § 30.7 customers.[69]

Like other commenters, NFA argued that codification in part 1 would provide a clear path for an FCM's DSRO to examine it for compliance with separate account treatment requirements, and would provide greater clarity to non-clearing FCMs regarding whether they are permitted to engage in separate account treatment.[70]

SIFMA–AMG recommended incorporating the First Proposal's conditions, with modifications, in Commission regulations §§ 1.11 and 1.56, and argued that codification in part 1 would directly establish obligations for the FCM, rather than indirect obligations applied through the DCO, with respect to separate treatment of customer accounts within the CFTC's regulatory framework.[71] SIFMA–AMG also argued that codification in part 1 would clarify that the regulatory obligations of the proposed regulation are the FCM's, and not the DCO's obligation to evaluate and determine if the FCM's behavior was appropriate.[72]

In light of these comments, the Commission has determined to propose codification of the underlying Margin Adequacy Requirement (*i.e.,* that an FCM should not permit a customer to withdraw margin funds from that customer's accounts with the FCM if the net liquidating value plus the margin deposits remaining in such accounts after such withdrawal would be insufficient to meet the customer's initial margin requirements)[73] along with the conditional modification of that requirement embodied in CFTC Letter No. 19–17, in part 1 of its regulations. The Commission believes codification in part 1 can be effectuated in a manner that provides appropriate flexibility for market participants, enhanced risk management and protection of customer funds along with appropriate flexibility for a larger number of FCMs, and more efficient supervision of compliance with the no-action conditions proposed to be codified, while maintaining the effectiveness of those conditions. Therefore, the Commission formally withdraws its First Proposal, and proposes this new rulemaking to provide for separate account treatment through part 1 of its regulations.

Separate from the question of whether the proposed codification should be in part 1 versus part 39, commenters provided feedback related to the proposed codification of individual no-action conditions. These comments are discussed below. The Commission notes

[57] *Id.*

[58] *Id.*

[59] FIA Comment letter. As set forth in Commission regulations, the term ''30.7 account'' means any account maintained by an FCM for or on behalf of 30.7 customers to hold money, securities, or other property to margin, guarantee, or secure foreign futures or foreign option positions. 17 CFR 30.1(g). The term ''30.7 customer'' means any person who trades foreign futures or foreign options through an FCM, except for the owner or holder of a proprietary account as defined in regulation § 1.3. 17 CFR 30.1(f).

[60] *Id.*

[61] *Id.* FIA noted that FCMs collect customer margin across DCOs and, if a DCO was to deny its clearing FCMs the right to provide separate account treatment, or establish different standards, such FCMs would effectively be denied the right to provide separate account treatment for their customers. *Id.*

[62] ICE Comment Letter. For instance, ICE contended that DCOs would not be well-placed to administer or enforce ensuring FCMs verify the identity of authorized representatives of clients, and recommended that if the Commission believes it necessary to establish steps clearing FCMs must take to identify such representatives, that it applies those requirements directly to such FCMs. *Id.* ICE also contended that a DSRO would be better placed than a DCO to readily assess whether an FCM is applying separate account treatment consistently. *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] JAC Comment Letter.

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] NFA Comment Letter.

[71] SIFMA–AMG Comment Letter.

[72] *Id.*

[73] As discussed further below, this requirement, which currently is effectively applied only to clearing FCMs, and predominately to part 1 (futures customer) and part 22 (Cleared Swaps Customer) accounts, would through codification in part 1 effectively apply to all FCMs, including those that are not members of a DCO, and would apply to all FCMs' 30.7 accounts.

that, with some exceptions that it believes are helpful to understanding differences between the First Proposal and this Second Proposal, certain comments that appear to be premised specifically on the First Proposal's proposed codification in part 39 in contrast to part 1 are not discussed, as the Commission no longer proposes to codify the no-action position in part 39.

In addition to the comments noted above, FIA supported amending regulation § 1.56 to add a new paragraph recognizing (i) the right of an FCM to allow a customer to withdraw excess funds from a separate account while there is an outstanding margin call in another separate account, and (ii) that an FCM may agree that, in the absence of certain conditions, it will not use excess funds from one account to meet an obligation in another account without the customer's consent.[74] ACLI, MFA, and SIFMA–AMG additionally supported codification of interpretation of regulation § 1.56.[75]

While appreciating those comments, the Commission seeks in this Second Proposal to engage in a narrower task: to directly apply the Margin Adequacy Requirement to all FCMs, while enacting a narrow codification (with respect to all FCMs) of the no-action position in CFTC Letter No. 19–17 with respect to the current Margin Adequacy Requirement embodied in regulation § 39.13(g)(8)(iii). Amendments to regulation § 1.56 are outside the scope of the proposed rulemaking.

As such, where an FCM elects to apply separate account treatment, such treatment shall apply only for purposes of proposed regulation § 1.44 (inclusive of the Margin Adequacy Requirement of proposed regulation § 1.44(b)), including requirements that flow through to, *e.g.,* Commission regulations §§ 1.17, 1.20, 1.32, 1.58, 1.73, 22.2, 30.7, the gross margining requirement of regulation § 39.13(g)(8)(i), and the Margin Adequacy Requirement of proposed regulation § 39.13(g)(8)(iii). Nothing in this rulemaking is intended to affect the requirements of regulation § 1.56 or, unless otherwise expressly indicated, any other Commission regulation.

D. The Commission's Second Proposal

For the reasons discussed above, the Commission proposes to codify the Margin Adequacy Requirement, along with the no-action position in CFTC Letter No. 19–17, in part 1. The bulk of the proposed regulation will be contained in new Commission regulation § 1.44, which is presently reserved. However, as explained below, the Commission also proposes supporting amendments in Commission regulations §§ 1.3, 1.17, 1.20, 1.32, 1.58, 1.73, 22.2, 30.2, 30.7, and 39.13 to facilitate implementation of proposed regulation § 1.44. The Commission is also proposing a number of amendments to address inadvertent inconsistencies in existing regulations.[76]

The Commission's Second Proposal represents in part a reorganization of the First Proposal. The First Proposal largely mirrored the organization of the no-action position in CFTC Letter No. 19–17, first providing that a DCO could allow a clearing FCM to engage in separate account treatment (so long as such clearing FCM complied with certain conditions), then explaining specific circumstances that would disqualify a clearing FCM from engaging in separate account treatment, and finally providing the specific risk-mitigating conditions with which the clearing FCM would be required to comply in order to provide separate account treatment.

Proposed regulation § 1.44 is comprised of eight paragraphs. First, proposed regulation § 1.44(a) defines key terms solely for purposes of proposed regulation § 1.44. Second, proposed regulation § 1.44(b) incorporates for all FCMs, and for all accounts,[77] the same Margin Adequacy Requirement that DCOs are obligated in regulation § 39.13(g)(8)(iii) to require their clearing FCMs to apply. Third, proposed regulation § 1.44(c) makes clear that an FCM can engage in separate account treatment only during the ''ordinary course of business,'' a term that is defined in proposed regulation § 1.44. Fourth, proposed regulation § 1.44(d) explains how FCMs may elect to engage in separate account treatment for one or more customers. Fifth, proposed regulation § 1.44(e) enumerates events inconsistent with the ordinary course of business and contains requirements for FCMs related to cessation of separate account treatment upon the occurrence of such events, and resumption of separate account treatment upon the cure of such events. Sixth, proposed regulation § 1.44(f) contains the requirement that each separate account be on a ''one business day margin call'' and sets out regulations designed to explain the meaning of a one business day margin call for purposes of proposed regulation § 1.44. Seventh, proposed regulation § 1.44(g) sets forth capital, risk management, and segregation calculation requirements with which FCMs would be required to comply with respect to accounts for which the FCM has elected separate treatment. Eighth, proposed regulation § 1.44(h) sets out information and disclosure requirements for FCMs that engage in separate account treatment.

In its comment responding to the First Proposal, the JAC recommended adding two additional conditions for separate account treatment. First, the JAC supported adding a condition requiring a clearing FCM's risk-based capital requirement to be adjusted to capture the risk of accounts receiving separate treatment.[78] As discussed below, the Commission is proposing to amend regulation § 1.17 to revise an FCM's risk-based capital requirement to capture the risks of separate accounts. Second, the JAC supported adding a condition requiring accounts treated as separate accounts to be identified as

[74] FIA Comment Letter. The Commission also received comments from two individuals generally supportive of the First Proposal. Additionally, the Commission received a comment from Symphony Communication Services, LLC, describing ways in which the commenter's technological capabilities could facilitate compliance with certain components of the First Proposal. Lastly, the Commission received a comment from an individual requesting that the Commission provide a chart explaining to what extent and subject to what conditions portfolio-based margining is available across specific products and scenarios. The Commission considers this request outside the scope of this Second Proposal.

[75] ACLI Comment Letter; MFA Comment Letter; SIFMA–AMG Comment Letter.

[76] These are proposed changes to regulation § 1.3 (to clarify that Saturday is not a business day), regulation § 1.17(b) (to reorganize the wording of the definition of the term ''business day'' for capital purposes to be consistent with the wording in the proposed amendments to regulation § 1.3, to clarify that the definition of the term ''risk margin'' includes both customer and noncustomer accounts, and to change the term ''FCM'' to read ''futures commission merchant''), regulations §§ 1.20(i), 30.7(f)(2), and 22.2(f) to revise the regulatory description of the calculation of the total amount of funds that an FCM must hold in segregation for futures customers, Cleared Swaps Customers, and 30.7 customers, respectively, to align such description with the Commission's financial forms and the instructions to such forms, reorganizing regulations § 22.2(f)), § 1.58(a) and (b) (to clarify that gross margining requirements for omnibus accounts carried for one FCM at another FCM apply to cleared swaps as well as to futures and options and futures), and § 30.2(b) (to clarify, in the context of the exclusion for applying certain regulations to persons and transactions subject to the requirements of part 30, existing regulations §§ 1.41, 1.42, and 1.43 (which were added in the 2021 part 190 bankruptcy rulemaking) are not excluded). These proposed changes are discussed in more detail in the relevant sections below.

[77] Proposed regulation § 1.44(a) defines ''account'' to include futures accounts and Cleared Swaps Customer Accounts, both of which terms are defined in regulation § 1.3, and 30.7 accounts. A 30.7 account means any account maintained by an FCM for or on behalf of 30.7 customers to hold money, securities, or other property to margin, guarantee, or secure foreign futures or foreign options. 17 CFR 30.1(g).

[78] JAC Comment Letter.

such in an FCM's books and records, including on customer statements.[79] The Commission's proposed regulation § 1.44(d)(1), as discussed below, would provide that an FCM must include each separate account customer on a list of separate account customers maintained in its books and records. While an FCM may elect to specifically identify separate accounts as such in customer statements, the Commission expects that FCMs will be able to readily identify all of their customer accounts receiving separate treatment.

II. Proposed Regulations

Section 8a(5) of the CEA[80] authorizes the Commission ''to make and promulgate such rules and regulation as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions, or to accomplish any of the purposes, of'' the CEA. The Commission is proposing these rules pursuant to section 8a(5) as reasonably necessary to effectuate sections 4d(a)(2) and 4d(f)(2),[81] providing for the segregation and protection of, respectively, futures customer funds and Cleared Swaps Customer Collateral, and 4(b)(2)(A),[82] providing for the safeguarding of customers' funds in connection with foreign futures and foreign option transactions. As additional authority, the Commission is also proposing these rules as reasonably necessary to effectuate section 4f(b), which requires an FCM to meet minimum financial requirements prescribed by the Commission as necessary to ensure that the firm meets its obligations.[83] Moreover, as further additional authority, the Commission is also proposing these rules as reasonably necessary to accomplish the purposes of the CEA as set forth in section 3(b);[84] specifically, ''the avoidance of systemic risk'' and ''protect[ing] all market participants from . . . misuses of customer assets.''

Accordingly, the Commission preliminarily believes that the amendments proposed herein relating to the Margin Adequacy Requirement, and the modification of this requirement to permit, subject to certain prescribed conditions, separate account treatment in connection with the withdrawal of customer initial margin, support the customer funds protection and risk management provisions and purposes of the CEA. As further described below, the Commission also preliminarily believes that preventing the under-margining of customer accounts and mitigating the risk of a clearing member default, or the default of a non-clearing FCM, and the potential for systemic risk in either scenario, is effectively addressed by the standards set forth in the proposed regulation.

All FCMs are currently subject to a detailed set of requirements designed to provide effective protection for customer funds. These include, for futures accounts, regulations §§ 1.20 (requiring segregation), 1.22 (requiring, *inter alia,* residual interest to cover undermargined amounts), and 1.23 (requiring FCMs to maintain residual interest in segregated accounts up to a targeted amount that they determine based on specified considerations), as well as similar requirements with respect to Cleared Swaps Customer Accounts (respectively, regulations §§ 22.2(d) and (f), and 22.17), and 30.7 accounts (regulation § 30.7).

Regulation § 39.13(g)(8)(iii) provides an additional layer of protection, but only with respect to FCMs that are clearing members of DCOs. There is no analogous Margin Adequacy Requirement applicable to FCMs that are not clearing members of DCOs. As discussed above, regulation § 39.13(g)(8)(iii) is designed to mitigate the risk that a clearing member fails to hold, from a customer, funds sufficient to cover the required initial margin for the customer's cleared positions and, in light of the use of omnibus margin accounts, ''avoid the misuse of customer funds'' by mitigating the likelihood that the clearing member will effectively cover one customer's margin shortfall using another customer's funds.[85] Regulation § 39.13(g)(8)(iii) provides a risk mitigation provision for DCOs, clearing FCMs, and customers. The effect of the staff no-action position is to allow DCOs to permit clearing FCMs to engage in separate account treatment for purposes of that provision, but subject to conditions designed to maintain the provision's risk mitigating effects.

Where it is now proposing to establish requirements for separate account treatment for all FCMs by adding a similar Margin Adequacy Requirement to part 1, the Commission seeks to replicate the same regulatory structure on an all-FCM basis, and furthers the customer fund protection and risk mitigation purposes of the CEA[86] by implementing measures designed to further ensure that all FCMs, whether clearing or non-clearing, do not create or exacerbate an under-margining scenario.

Similar to the First Proposal, the requirements for separate account treatment proposed herein are designed to ensure that FCMs carry out separate account treatment in a consistent and documented manner, monitor customer accounts on a separate and combined basis, identify and act upon instances of financial or operational distress that necessitate a cessation of separate account treatment, provide appropriate disclosures to customers[87] regarding separate account treatment, and apprise their DSROs when they apply separate account treatment or an event has occurred that would necessitate cessation of separate account treatment.[88]

The Second Proposal is designed to extend the customer protection and risk management benefits of regulation § 39.13(g)(8)(iii) to all FCMs and all of their customer accounts, and to provide an alternative means of achieving those risk management goals if the FCM elects to permit customers to maintain separate accounts under the proposal.[89] Additionally, as discussed further below in the cost benefit considerations, because a number of clearing FCMs have already implemented the conditions set forth in CFTC Letter No. 19–17, a number of FCMs will have already implemented, in significant part, the requirements proposed herein.

Request for Comment

Question 1: The Commission requests comment regarding whether, in light of changes made in this Second Proposal relative to the First Proposal, it should consider any conditions additional to those contained in proposed regulation § 1.44 below, or modify or remove any of the conditions proposed herein.

Question 2: The Commission requests comment regarding whether the

[79] *Id.*

[80] 7 U.S.C. 12a(5).

[81] 7 U.S.C. 6d(a)(2) and (f)(2).

[82] 7 U.S.C. 6(b)(2)(A).

[83] 7 U.S.C. 6f(b).

[84] 7 U.S.C. 5(b).

[85] Section 3(b) of the CEA, 7 U.S.C. 5(b).

[86] Section 3(b) of the CEA, 7 U.S.C. 5(b) (It is the purpose of this Act to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk and to protect all market participants from misuses of customer assets)

[87] In this proposal, references to a ''customer'' are to a direct customer of the FCM in question. Thus, where non-clearing FCM *N* clears through clearing FCM *C,* a customer (including a separate account customer) of *N* is not considered a customer of *C.*

[88] For the avoidance of doubt, the Second Proposal permits an FCM to elect to engage in separate account treatment. It neither requires an FCM to engage in such treatment nor requires a customer of an FCM that elects to engage in separate account treatment to elect to have its accounts with such FCM treated as separate accounts of separate entities. Thus, separate account treatment requires an affirmative election of both the FCM and the customer.

[89] As a result, proposed regulation § 1.44 would prohibit the application of portfolio margining or cross-margining treatment *between* separate accounts of the same customer, but would not prohibit the application of such treatments *within* a particular separate account of a customer.

interaction between proposed regulation § 1.44(g) through (h) and other regulations under parts 1, 22, and 30 affected by the proposed requirements therein (*e.g.,* regulations §§ 1.17, 1.20, 1.22, 1.23, 1.32, 1.55, 1.58, 1.73, 22.2, 30.2, and 30.7) is sufficiently clear.

A. Proposed Amendments to Regulation § 1.3

The definitions contained in Commission regulation § 1.3 are key to understanding and interpreting the Commission's regulations, including part 1 FCM regulations. The Commission believes the provisions of proposed regulation § 1.44 necessitate an amendment to regulation § 1.3.

The Commission proposes to amend the definition of ''business day'' in regulation § 1.3. Current regulation § 1.3 provides, in relevant part, that ''business day'' means any day other than a Sunday or holiday. The Commission proposes to expand this definition to confirm that the term encompasses any day other than a *Saturday,* Sunday, or holiday. This term, which is applicable to proposed regulation § 1.44(f), setting forth the requirement that separate accounts be on a one business day margin call, is similar to the proposed definition of ''United States business day,'' which appeared in the First Proposal.[90] As in the First Proposal, however, the term is intended to encompass days on which banks and custodians are open in the United States to facilitate payment of margin. Thus, for the avoidance of doubt, ''holiday'' in this context refers to holidays in the United States.

The Commission notes that, notwithstanding the current definition of the term in regulation § 1.3, which is used in a variety of regulations, in actual practice, Saturdays are generally not treated as business days in the markets,[91] by market participants, or for regulatory purposes.[92] The Commission is thus proposing to change the definition of ''business day'' in regulation § 1.3 to conform to that reality.

Request for Comment

Question 3: The Commission requests comment regarding whether its proposal to revise the definition of ''business day'' in regulation § 1.3 would result in any adverse consequences for any market participants.

B. Proposed Amendments to Regulation § 1.17

Regulation § 1.17 currently establishes minimum financial requirements for FCMs. In this regard, regulation § 1.17(a)(1)(i) provides that each person registered as an FCM must maintain adjusted net capital equal to, or in excess of, the greatest of: (1) $1 million (or $20 million if the FCM is also registered as a swap dealer); (2) eight percent of the total ''risk margin'' required on the positions in customer and noncustomer accounts [93] carried by the FCM; (3) the amount of adjusted net capital required by NFA as a registered futures association; or (4) for an FCM registered as a securities broker or dealer with the Securities and Exchange Commission (SEC), the amount of net capital required by SEC rule § 15c3–1.[94] For purposes of regulation § 1.17(a)(1)(i), the term ''risk margin'' is defined by paragraph (b)(8) of regulation § 1.17 to generally mean the level of maintenance margin or performance bond required for customer and noncustomer positions established by the applicable exchanges or clearing organizations.

The Commission is proposing several amendments to regulation § 1.17 to reflect the regulatory capital treatment of separate accounts that would result from the implementation of proposed regulation § 1.44, including the conditions contained in proposed regulation § 1.44(g)(3) discussed below. These proposed amendments were not part of the First Proposal. As a general matter, the proposed amendments to regulation § 1.17 are designed to ensure that FCMs risk manage separate accounts consistently, and cannot revert to calculating minimum financial requirements on a combined account basis where such calculations would tend to reflect less risk and reduced financial requirements for a customer than if each of the customer's separate accounts were treated as an account of a distinct customer without regard to the same customer's other separate accounts.

Consistent with the above intent, the Commission is proposing to expand the list of modifiers to the definition of the term ''risk margin'' for an account by adding proposed paragraph (b)(8)(v) to regulation § 1.17, providing that if an FCM carries separate accounts for separate account customers pursuant to proposed regulation § 1.44, then the FCM shall calculate the risk margin pursuant to regulation § 1.17(a)(1)(i)(B)(*1*) as if each separate account is owned by a separate entity. The Commission notes that, under the proposed regulation, risk margin would be calculated on an individual basis for each separate account. Calculating risk margin separately for each separate account would eliminate the potential for portfolio margining offsets based on positions between separate accounts of the same separate account customer.[95] Therefore, the proposal to treat separate accounts as accounts of separate entities would either increase, or leave unchanged, the total risk margin requirement, and thus the minimum adjusted net capital requirement, for an FCM providing separate account treatment.[96] The proposed addition of paragraph (b)(8)(v) to regulation § 1.17 is intended to further clarify that, pursuant to the Commission's FCM capital rule, an FCM that elects to permit separate account treatment must compute the risk margin amount for separate

[90] Under the First Proposal, the term ''United States business day'' referred to weekdays not including federal holidays as established by 5 U.S.C. 6103.

[91] It is true that some markets are moving toward 24/7 operation. The Commission will continue to monitor these developments, and consider further rulemaking in this area as appropriate. Nonetheless, a definition of business days that includes Saturday, but not Sunday, does not reflect present or plausible future reality.

[92] For instance, Saturdays are treated as non-business days for purposes of swaps reporting under parts 43 and 45 of the Commission's regulations, 17 CFR 43.1; 17 CFR 45.2, execution of confirmations by swap dealers, 17 CFR 23.501(c)(5)(ii), and under the Commission's part 39 DCO regulations, 17 CFR 39.2 (defining an intraday business day period). *See also, e.g.,* CFTC, Guidebook for Part 17.00: Reports by Reporting Markets, Futures Commission Merchants, Clearing Members, and Foreign Brokers, at 18, May 30, 2023 (noting that for purposes of part 17.00 reports, ''reporting entities may elect to not consider Saturdays to be a business day, as Saturday is not commonly known as such'').

[93] The term ''noncustomer account'' generally means the accounts of affiliates of an FCM or employees of an FCM. *See* 17 CFR 1.17(b)(4).

[94] 17 CFR 240.15c3–1.

[95] As noted in regulation § 39.13(g)(4), a DCO may allow reduction in initial margin requirements for related positions if the price risks with respect to such positions are significantly and reliably correlated. This includes cases where (A) The products on which the positions are based are complements of, or substitutes for, each other. An example might be long versus short positions in oil and natural gas, both of which may be used for generating energy. However, portfolio margining is applicable only to accounts for the same customer. *See* regulation § 39.13(g)(8)(i) (requiring collection of initial margin on a gross basis for each clearing member's customer accounts). So, if a customer has, in a single account, both long oil positions and short natural gas positions, they may benefit from a reduction in initial margin requirements for the two risk-offsetting positions. However, if those positions are in different separate accounts of the customer under this proposal, the positions would not lead to an initial margin reduction as the positions would not be margined on a combined or portfolio basis.

[96] As noted above, per regulation § 1.17(a)(1)(i), the adjusted net capital requirement for an FCM is the greatest of a number of calculations, one of which is eight percent of the total risk margin requirement as defined in regulation § 1.17(b)(8). Thus, a calculation that would increase, or leave the same, the risk margin requirement would correspondingly increase, or leave the same, the adjusted net capital requirement.

accounts as if each account is an account of a separate entity.

The Commission further notes that the proposed amendment to the definition of the term ''risk margin'' in regulation § 1.17(b)(8) to reflect separate accounts, and the resulting potential increase in an FCM's minimum adjusted net capital requirement under regulation § 1.17(a)(1)(i), would also impact other regulations that impose obligations on FCMs based on their level of adjusted net capital. For example, regulation § 1.17(h) conditions an FCM's ability to repay or prepay subordinated debt obligations on the FCM maintaining an amount of adjusted net capital that, after taking into effect the amount of the subordinated debt payment and other subordinate debt payments maturing within a set time period, exceeds the FCM's minimum adjusted net capital requirement by 120 percent to 125 percent, as specified in the applicable provision of regulation § 1.17(h).[97] The proposed amendments to the minimum capital requirements would also impact an FCM's obligation to provide certain notices to the Commission and to the FCM's DSRO under Commission regulation § 1.12.[98]

The Commission additionally notes that, as discussed further below, it is additionally proposing to amend regulation § 1.58 to provide that, where a clearing FCM carries an omnibus customer account for a non-clearing FCM, and the non-clearing FCM applies separate account treatment, then such non-clearing FCM must calculate initial and maintenance margin for purposes of regulation § 1.58(a) separately for each separate account. These proposed amendments to regulation § 1.58 are discussed further below.

Second, the Commission proposes to amend regulation § 1.17(c)(2), which defines ''current assets'' that an FCM may recognize and include in computing its net capital. Regulation § 1.17(c)(2) currently defines ''current assets'' to include cash and other assets or resources commonly identified as those that are reasonably expected to be realized in cash or sold during the next 12 months. Regulation § 1.17(c)(2)(i), however, provides that an FCM must exclude from current assets any unsecured receivables resulting from futures, Cleared Swaps, or 30.7 accounts that liquidate to a deficit or contain a debit ledger balance only, provided, however, that the FCM may include a deficit or debit ledger balance in current assets until the close of business on the business day following the date on which the deficit or debit ledger balance originated (provided, in turn, that the account had timely satisfied the previous day's deficits or debit ledger balances).

The Commission is proposing to amend regulation § 1.17(c)(2)(i) to provide explicitly that if an FCM carries separate accounts for separate account customers pursuant to proposed regulation § 1.44, then the FCM must treat each separate account as an account of a separate entity. Accordingly, the FCM must exclude each unsecured separate account that liquidates to a deficit or contains a debit ledger balance only from current assets in its calculation of net capital, provided, however, that if the separate account is subject to a call for margin by the FCM it may be included in current assets until the close of business on the business day following the date on which the deficit or debit ledger balance originated, provided that the separate account timely satisfied previous day's debit or deficits in its entirety. If the separate account does not satisfy a previous day's deficit in its entirety, then the deficit for the separate account, and any other deficits of the separate account customer in other separate accounts carried by the FCM, shall not be included in current assets until all such calls are satisfied in their entirety. The proposed amendment to regulation § 1.17(c)(2)(i) would provide the same capital treatment to separate accounts as is currently provided customer accounts that liquidate to deficits or contain debit ledger balances, and is consistent with corresponding conditions to the no-action position in CFTC Letter No. 19–17.[99]

Third, the Commission proposes to amend regulation § 1.17(c)(4), which defines the term ''liabilities'' for purposes of an FCM calculating its net capital. Regulation § 1.17(c)(4) generally defines the term ''liabilities'' to mean the total money liabilities of an FCM arising in connection with any transaction whatsoever, including economic obligations of an FCM that are recognized and measured in conformity with generally accepted accounting principles. Regulation § 1.17(c)(4) also provides that for purposes of computing net capital, an FCM may exclude from its liabilities funds held in segregation for futures customers, Cleared Swaps Customers, and 30.7 customers, provided that such segregated funds are also excluded from the FCM's current assets in computing the firm's net capital. The Commission is proposing to amend regulation § 1.17(c)(4)(ii) to explicitly provide that an FCM that carries the separate accounts of separate account customers pursuant to proposed regulation § 1.44 must compute the amount of money, securities, and property due to a separate account customer as if each separate account of the separate account customer is a distinct customer. The Commission is further proposing to amend regulation § 1.17(c)(4)(ii) to provide that an FCM, in computing its net capital, may exclude funds held in segregation for separate account customers from the FCM's liabilities, provided that funds held in segregation for separate account customers are also excluded from the FCM's current assets. The purpose of the proposed amendment is to ensure that an FCM, in computing its net capital, reflects separate accounts in a consistent manner in determining its total current assets and liabilities.

Fourth, the Commission proposes to amend regulation § 1.17(c)(5), which defines the term ''adjusted net capital.'' Regulation § 1.17(c)(5)(viii) provides, in relevant part, that adjusted net capital means net capital minus, among other items detailed in regulation § 1.17(c)(5), the amount of funds required in each customer account to meet maintenance margin requirements of the applicable board of trade or, if there are no such maintenance margin requirements, clearing organization margin requirements applicable to the account's positions. FCMs are allowed to apply (that is, to reduce the amount of this deduction from capital by) ''calls for margin or other required deposits which are outstanding no more than one business day.'' However, once a customer fails to meet a margin call within one business day, the FCM loses the one business day ''grace period'' for receiving any of that customer's future margin calls, until the point in time at which the customer is no longer undermargined.

[97] *See, e.g.,* 17 CFR 1.17(h)(2)(vii) which generally provides, subject to certain conditions, that an FCM may not make a prepayment on an outstanding subordinated debt obligation if such payment would result in the FCM maintaining less than 120 percent of its minimum adjusted net capital requirement.

[98] *See, e.g.,* 17 CFR 1.12(a), which requires an FCM to provide notice to the Commission and the firm's DSRO if the FCM's adjusted net capital at any time is less than the minimum required by regulation § 1.17.

[99] CFTC Letter No. 19–17. CFTC Letter No. 19–17 provides that an ''FCM shall record each separate account independently in the FCM's books and records, *i.e.,* the FCM shall record separate accounts as a receivable (debit/deficit) or payable with no offsets between the other separate accounts of the same customer.'' *Id.* (Condition 6.) CFTC Letter No. 19–17 also provides that ''the receivable from a separate account shall only be considered secured (a current/allowable asset) based on the assets of that separate account, not on the assets held in another separate account of the same customer.'' *Id.* (Condition 7.)

Thus, if, due to activity on Monday, Customer A is undermargined by $150, and the FCM calls Customer A for that margin on Tuesday, the FCM does not need to deduct that $150 from its net capital in computing its adjusted net capital, so long as the margin call is met by the close of business on Wednesday. Moreover, if Customer A, due to activity on Tuesday, is undermargined by an additional $100, and the FCM calls for that additional $100 on Wednesday, the FCM does not need to deduct that additional $100 on Wednesday. If Customer A meets the $150 call by close of business Wednesday, and the $100 call by close of business on Thursday, then no deduction need be taken for either the $150 or the $100 margin calls. However, if Customer A fails to meet Tuesday's $150 call by close of business on Wednesday, then the FCM must deduct *both* the $150 from Tuesday *and* the $100 from Wednesday (thus a total of $250), as well as any future undermargined amounts *until* Customer A cures its entire undermargined amount. Again, once a customer fails to meet a margin call within one business day, the FCM loses the one business day ''grace period'' for that customer meeting any of its future margin calls, until the point in time at which the customer is no longer undermargined.

The Commission proposes to amend regulation § 1.17(c)(5)(viii) to provide that an FCM that carries separate accounts for a separate account customer pursuant to proposed regulation § 1.44 must compute the amount of funds required to meet maintenance margin requirements for each separate account as if the account was owned by a distinct customer. However, if a margin call for any separate account of a separate account customer is outstanding for more than one business day, then (consistent with the treatment of multiple margin calls for a single customer described in the previous paragraph), no margin call for that separate account customer will benefit from the one business day grace period until the point in time at which all margin calls for the separate accounts of that separate account customer have been met in full.

As discussed further below in the context of proposed regulation § 1.44(f), the concepts of margin calls that are outstanding no more than one business day (for purposes of § 1.17(c)(5)(viii)), and meeting a one business day margin call (for purposes of § 1.44(f)) are separate and distinct—it is possible that a separate account customer may meet the test for the first, but not the second, or may meet the test for the second, but not the first.

The Commission notes that its proposed amendments to regulation § 1.17 also include a number of technical changes designed to improve clarity and promote consistency with other Commission regulations.[100]

C. Proposed Amendments to Regulations §§ 1.20, 1.32, 22.2, and 30.7

As previously stated, a fundamental purpose of the CEA is to provide for the protection of market participants from misuses of customer assets.[101] Regulations §§ 1.32, 22.2(g), and 30.7(l) are designed in part to further this purpose by requiring each FCM carrying accounts for futures customers, Cleared Swaps Customers, or 30.7 customers, respectively, to perform a daily computation of, and to prepare a daily record demonstrating compliance with, the FCM's obligation to hold a sufficient amount of funds in designated customer segregated accounts to meet the aggregate credit balances of all of the FCM's futures customers, Cleared Swaps Customers, and 30.7 customers.[102] An FCM is required to prepare the daily segregation calculations reflecting customer account balances as of the close of business each day, and to submit the applicable segregation statements electronically to the Commission and to the FCM's DSRO by noon the next business day.

The Commission is proposing to amend regulations §§ 1.32, 22.2, and 30.7 to provide that an FCM that permits separate accounts pursuant to proposed regulation § 1.44 must perform its daily segregation calculations, and prepare its daily segregation statements, by treating the accounts of separate account customers as accounts of separate entities. The proposed amendments would add new paragraph (l) to regulation § 1.32, new paragraph (g)(11) to regulation § 22.2, and new paragraph (l)(11) to regulation § 30.7. The purpose of the proposed amendments is to establish the manner in which these existing segregation and reporting obligations apply to FCMs that permit separate accounts pursuant to proposed regulation § 1.44. Regulations §§ 1.32, 22.2, and 30.7 require an FCM to prepare one daily segregation computation, and submit one segregation schedule, for each of its futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds, respectively. The proposed amendments to regulations §§ 1.32, 22.2(g), and 30.7(l) provide that an FCM that permits separate accounts, in preparing such computation and segregation schedule, would be required to record each separate account as if it was an account of a separate entity, and include all separate accounts with other futures accounts, Cleared Swaps Customer Accounts, and 30.7 accounts, as applicable, carried by the FCM that are not separate accounts.

In addition, the proposed amendments would provide that an FCM, in computing its segregation obligations, may offset a net deficit in a particular separate account customer's separate account against the current value of any readily marketable securities held by the FCM for the separate account customer, provided that the readily marketable securities are held as margin collateral for the specific separate account that is in deficit. Readily marketable securities held for other separate accounts of the separate account customer may not be used to offset the separate accounts that is in deficit.[103] The proposed amendments to regulations §§ 1.32, 22.2(g), and 30.7(l) with respect to the offsetting of a net deficit in a customer's account by the value of readily marketable securities

[100] *E.g.,* changes to punctuation and substitution of level of maintenance margin or performance bond required for the customer *and* noncustomer positions for level of maintenance margin or performance bond required for the customer *or* noncustomer positions with respect to the meaning of risk margin for an account. *See, e.g.,* proposed regulation § 1.17(b)(8). The Commission is further proposing to replace the term ''FCM'' in regulation § 1.17(b)(8) with ''futures commission merchant.'' The Commission is also proposing to reorganize paragraph § 1.17(c)(5)(viii) into sub-paragraphs (A), (B), (C), and (D) to enhance clarity. The Commission is additionally proposing to reorganize the wording of the definition of the term ''business day'' in regulation § 1.17(b)(6) to read any day other than a Saturday, Sunday, or holiday rather than any day other than a Sunday, Saturday, or holiday. This change would align the wording with the wording of the term ''business day'' in proposed regulation § 1.3.

[101] Section 3(b) of the CEA, 7 U.S.C. 5(b).

[102] Each FCM that carries accounts for futures customers, Cleared Swaps Customers, and 30.7 customers is required to prepare daily statements demonstrating compliance with the applicable segregation requirements. For futures customers, the FCM must prepare a daily Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges (17 CFR 1.32(a)) (''Futures Segregation Statement''); for Cleared Swaps Customers, the FCM must prepare a daily Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under section 4d(f) of the CEA (17 CFR 22.2(g)(1) through (4)) (''Cleared Swaps Segregation Statement''); and for 30.7 customers, the FCM must prepare a daily Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers pursuant to Commission Regulation 30.7 (17 CFR 30.7(l)(1)). The statements listed above are part of the Commission's Form 1–FR–FCM, which contains the financial reporting templates required to be filed by FCMs.

[103] *I.e.,* if separate account customer *S* has separate accounts *A* and *B,* then readily marketable securities held for separate account *A* could not be used to offset a deficit in separate account *B,* and vice versa.

held in the customer's account are consistent with how an FCM currently offsets a net deficit in a customer's account that is margined by securities. In addition, the proposed amendments are consistent with the separate account conditions to the no-action position in CFTC Letter No. 19–17.[104]

The Commission is also proposing to amend regulation § 22.2(f) to revise the regulatory description of the stated calculation of the total amount of funds that an FCM is required to hold in segregation for Cleared Swaps Customers. The proposed amendment would (i) correct an error included in the drafting of the description of the calculation when the regulation was originally adopted in 2012; and (ii) align the regulatory text describing the segregation calculation set forth in regulation § 22.2(f) with the calculation performed on the Cleared Swaps Segregation Statement that is submitted to the Commission each day by FCMs with Cleared Swaps Customers pursuant to regulation § 22.2(g). The proposed amendment would be applicable across FCMs with Cleared Swaps Customers, whether or not such FCMs maintain separate accounts.

The segregation calculation required by regulation § 22.2(f) is intended to ensure that an FCM holds, at all times, a sufficient amount of funds in segregation to cover its total financial obligation to all Cleared Swaps Customers. Compliance with the segregation requirements helps ensure that an FCM is not using the funds of one Cleared Swaps Customer to cover a deficit in the Cleared Swaps Customer Account of another Cleared Swaps Customer, and further helps ensure that an FCM holds sufficient funds in segregation to transfer the Cleared Swaps Customer Accounts, including the Cleared Swaps and the Cleared Swaps Customer Collateral, to a transferee FCM if the transferor FCM becomes insolvent.

To achieve the regulatory objective noted above, regulation § 22.2(f)(2) currently requires an FCM to calculate its minimum segregation requirement as the sum of the net liquidating equities of each Cleared Swaps Customer Account with a positive account balance carried by the firm. The net liquidating equity of a Cleared Swaps Customer Account is explicitly calculated as the sum of the market value of any funds held in the Cleared Swaps Customer Account of a Cleared Swaps Customer (including readily marketable securities), as adjusted positively or negatively by, among other things, any unrealized gains or losses on open Cleared Swaps positions, the value of open long option positions and short option positions, fees charged to the account, and authorized withdrawals. To the extent that the calculation results in a net liquidating equity that is positive, the Cleared Swaps Customer Account has a credit balance.[105] To the extent that the calculation results in a net liquidating equity that is negative, the Cleared Swaps Customer Account has a debit balance.[106] Regulation § 22.2(f)(4) provides that an FCM must hold, at all times, a sufficient amount of funds in segregation to meet the total net liquidating equities of all Cleared Swaps Customer Accounts with credit balances, and further provides that the FCM may not offset this total by any Cleared Swaps Customer Accounts with debit balances.

With respect to Cleared Swaps Customer Accounts with debit balances, regulation § 22.2(f)(5) further requires the FCM to include in the total funds required to be held in segregation all debit balances to the extent secured by readily marketable securities held for the particular Cleared Swaps Customers that have debit balances. The required addition of debit balance accounts in regulation § 22.2(f)(5) was intended to be consistent with the long-standing Futures Segregation Statement contained in the Form 1–FR–FCM and the Form 1–FR–FCM Instructions Manual.[107] An error, however, was made in drafting the description of the details of the segregation calculation in regulation § 22.2(f)(5). Specifically, as noted above, regulation § 22.2(f)(5) requires an FCM to include in the total segregation requirement any Cleared Swaps Customer Accounts with debit balances that are secured by readily marketable securities. However, the full value of the readily marketable collateral is part of the calculation of the net liquidating equity of the account. Therefore, a Cleared Swaps Customer Account with a debit balance would never have additional readily marketable securities available to offset a debit balance.[108]

The segregation calculation required under regulation § 1.32 for futures accounts, and the Commission's Form 1–FR–FCM and related Form 1–FR–FCM Instructions Manual, differs from the description as currently written in regulation § 22.2(f)(4) and (5) with respect to the offsetting of debit balances by readily marketable securities. Specifically, an FCM is required to calculate the net equity of each futures customer excluding the value of any noncash collateral held in the account.[109] If the calculation results in a debit balance, the FCM is permitted to offset the debit balance by the fair market value of any readily marketable securities (after application of applicable securities haircuts set forth in the regulation).[110]

As noted above, the proposed amendments to regulation § 22.2(f)(4) and (5) are intended to correct the description of the segregation calculation and to make it consistent

[104] *See* CFTC Letter No. 19–17 (providing, among other conditions for separate account treatment, that ''[e]ach receivable from a separate account shall be 'grossed up' on the applicable segregation, secured or cleared swaps customer statement; thus, an FCM shall use its own funds to cover the debit/deficit of each separate account.'').

[105] 17 CFR 22.2(f)(3).

[106] *Id.*

[107] In adopting the final regulation § 22.2(f), the Commission stated that proposed regulation § 22.2(f) set forth an explicit calculation for the amount of Cleared Swaps Customer Collateral that an FCM must maintain in segregation that did not materially differ from the calculation of the amount of funds an FCM is required to hold in segregation under the Form 1–FR–FCM for futures customers. The Commission adopted final regulation § 22.2(f) as proposed. *Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions; Final Rule,* 77 FR 6336, at 6352–6353 (Feb. 7, 2012).

[108] For example, if a Cleared Swaps Customer Account was comprised of cash of $300, securities of $200, and an unrealized loss on open Cleared Swaps of $600, the account would have a net equity debit balance of $100 under regulation § 22.2(f). There are no additional securities that the FCM may use to secure the $100 debit balance and, therefore, the FCM is required to increase its segregation requirement by $100 to ensure that there are sufficient funds in segregation to cover the FCM's obligation to all Cleared Swaps Customers with a credit balance.

[109] The Form 1–FR–FCM Instructions Manual provides that a customer account is in deficit when the combination of the account's cash ledger balance, unrealized gain or loss on open futures contracts, and the value of open option contracts liquidates to an amount less than zero. The manual explicitly provides that ''[a]ny securities used to margin the account are not included in determining a customer's deficit.'' 1–FR–FCM Instructions Manual, p. 10–2. Accordingly, an FCM would exclude the value of any readily marketable securities from the calculation of the customer's account balance. The 1–FR–FCM Instructions Manual is available on the Commission's website at: *www.cftc.gov/sites/default/files/idc/groups/public/@iointermediaries/documents/file/1fr-fcminstructions.pdf.*

[110] 17 CFR 1.32(b). Applying the calculation in regulation § 1.32 to Cleared Swaps, if a Cleared Swaps Customer Account was comprised of cash of $300, securities of $200, and an unrealized loss on open Cleared Swaps of $600, the account would have a net equity debit balance of $300, as the value of the securities is not included in the calculation ($300 cash less $600 in unrealized losses, results in a $300 debit balance). The FCM may offset the $300 debit balance by $170, which represents the value of the readily marketable securities held in the account as collateral ($200 fair market value of the securities, less a $30 haircut). The FCM is then required to include $130 in its segregation requirement, which represents the amount of the unsecured debit balance remaining in the customer's account (*i.e.,* $300 debit balance, less $170 value of the securities after haircuts).

with how FCMs calculate their total Cleared Swaps segregation obligations under regulation § 22.2(g), with how FCMs report their total segregation requirements on the Cleared Swaps Segregation Statement, and with the segregation calculation requirements for futures accounts under regulation § 1.32. Thus, the proposed amendments are not expected to have any effect on FCMs.

In addition, the Commission is proposing to amend regulations §§ 1.20(i) and 30.7(f), which require an FCM carrying futures accounts and 30.7 accounts, respectively, to calculate its total segregation requirements in a manner that is consistent with current regulation § 22.2(f). As with the proposed amendment to regulation § 22.2(f), the proposed amendments to regulations §§ 1.20(i) and 30.7(f) apply across FCMs that maintain futures customer accounts or 30.7 customer accounts, respectively, whether or not such FCMs maintain separate accounts. The Commission adopted current regulations §§ 1.20(i) and 30.7(f) in 2013. The final regulations, however, did not include the provision set forth in regulation § 22.2(f)(5) requiring an FCM to include any secured debit balances in its segregation requirement. This omission was unintentional, as the Commission expressed its intent to ''mirror'' the requirements of regulation § 22.2(f) in regulation § 1.20(i) (and effectively regulation § 30.7(f)).[111]

To address the omission, the Commission is proposing to amend regulations §§ 1.20(i) and 30.7(f) to reflect the requirement for an FCM to include in the calculation of its futures and foreign futures segregation requirement any unsecured customer debit balances, calculated consistent with the proposed amendments to regulation § 22.2(f)(4) and (5) that are discussed above. The proposed amendments to regulations §§ 1.20(i) and 30.7(f) would accurately describe and reflect the existing segregation calculations for futures, foreign futures, and Cleared Swaps as originally intended. The proposed amendments to regulations §§ 1.20(i) and 30.7(f) are not expected to have any impact on FCMs as the firms currently calculate their segregation requirements by including customer unsecured debit balances.

D. Proposed Regulation § 1.44(a)

Proposed regulation § 1.44 will represent a discrete set of regulations, first directly requiring FCMs to avoid returning margin to customers where doing so would create or exacerbate a margin deficiency in the customer's account, but then allowing FCMs to provide for separate account treatment within the Commission's broader regulatory framework for FCMs. As such, proposed regulation § 1.44 contains a number of terms that are specific to proposed regulation § 1.44, but are not applicable, or are not applicable in the same manner, with respect to other of the Commission's FCM regulations. The Commission therefore proposes to add new regulation § 1.44(a) to define certain terms ''only for purposes of this section'' (*i.e.,* proposed regulation § 1.44).

The Commission proposes to define ''account'' for purposes of proposed regulation § 1.44 as meaning a futures account, a Cleared Swaps Customer Account (both of which are defined in regulation § 1.3, which definitions apply broadly to all CFTC regulations) or a § 30.7 account (as defined in regulation § 30.1). This definition is intended to implement the proposed Margin Adequacy Requirement and requirements for separate account treatment subject to such Margin Adequacy Requirement, with respect to accounts of all three types. This definition was not included in the First Proposal.

The Commission also proposes in proposed regulation § 1.44(a) to further define ''business day,'' as having the same meaning as set forth in regulation § 1.3, but with the clarification that ''holiday'' refers to Federal holidays as established by 5 U.S.C. 6103. As noted above, this definition is similar to the definition of ''United States business day'' included in the First Proposal. In its comment responding to the First Proposal, FIA noted that the term ''United States business day'' accounts for days that banks are open, but may not encompass days when other markets, such as securities markets, are closed, which could make it difficult to meet margin calls by liquidating certain instruments.[112] The Commission requests further comment on this term, below.

Relatedly, the Commission proposes to define ''one business day margin call'' as a margin call that is issued and met in accordance with the requirements of proposed regulation § 1.44(f). The First Proposal did not include this definition, although it contained provisions that, similar to proposed regulation § 1.44(f), further explained when an FCM would be considered in compliance with a one business day margin call. As noted above, this definition (along with all of the definitions in proposed regulation § 1.44(a)) applies only for purposes of proposed regulation § 1.44, thus, this definition of ''one business day margin call'' is not intended to apply in any other context.

Under proposed regulation § 1.44, an FCM may engage in separate account treatment only when it, and its customer, are operating within the ''ordinary course of business,'' as that term is defined in the proposed regulation. The Commission proposes to define ''ordinary course of business'' as meaning the standard day-to-day operation of the FCM's business relationship with its separate account customer, a condition where there are no unusual circumstances that might indicate a materially increased level of risk that the separate account customer may fail promptly to perform its financial obligations to the FCM, or decreased financial resilience on the part of the FCM. As noted in the proposed definition, proposed regulation § 1.44(e) sets out circumstances that are inconsistent with the ordinary course of business, and the occurrence of which would require a cessation of separate account treatment. This definition of ''ordinary course of business'' is unchanged from the First Proposal, except that it replaces the term ''customer'' with the term ''separate account customer.'' Comments received regarding the definition of ''ordinary course of business'' are addressed in connection with proposed regulation § 1.44(e) below, which enumerates events that are inconsistent with the ordinary course of business.

The Commission also proposes to define ''separate account'' as meaning any one of multiple accounts of the same separate account customer that are carried by the same FCM. The definition of this term is the same as in the First Proposal, except that it replaces ''customer'' with ''separate account customer'' and excludes the criteria that the FCM be a clearing member of a DCO. The Commission did not receive comments on the definition of this term in the First Proposal.

As noted above, the Commission proposes to define ''separate account customer'' as meaning a customer for

[111] *Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,* 78 FR 68506, 68543 (Nov. 14, 2013) (discussing the Commission's intent to adopt regulation § 1.20(i) consistent with the corresponding requirements in regulation § 22.2(f)); *id.* at 68576 (discussing the Commission's intent for the daily segregation calculation for 30.7 accounts to be consistent with the requirements for the daily segregation calculations for futures customer funds in regulation § 1.32).

[112] FIA Comment Letter.

which the FCM has elected to engage in separate account treatment. This definition was not included in the First Proposal.

Lastly, the Commission proposes to define ''undermargined amount'' for an account as meaning the amount, if any, by which the customer margin requirements with respect to all products held in that account, exceeds the net liquidating value plus the margin deposits currently remaining in that account.[113] The definition notes that for purposes of this definition, ''margin requirements'' shall mean the level of maintenance margin or performance bond (including, as appropriate, the equity component or premium for long or short option positions) required for the positions in the account by the applicable exchanges or clearing organizations.[114] This clarification (which is drawn from the definition of risk margin in regulation § 1.17(b)(8)) is in recognition of the difference between exchange (or clearing organization) requirements for ''initial margin'' and ''maintenance margin.'' However, here, in distinction to risk margin, the equity component or premium for long or short option positions is included, since those are part of the total required level of margin. ''Initial margin'' is the amount of margin (otherwise known as ''performance bond'' [115] in this context) required to establish a position. Some (though not all) contract markets and clearing houses establish ''maintenance margin'' requirements that are less than the corresponding initial margin requirement.'' Where, due to adverse market movements, the amount of margin on deposit is less than the initial margin requirement, but greater than or equal to maintenance margin, the FCM is not required to (though it may) call additional margin from the customer. Once the amount of margin on deposit is less than the maintenance margin required, the FCM must call the customer for enough margin to meet the *initial* margin level.

The Commission uses this term in connection with proposed regulation § 1.44(f) in defining the requirements for making and meeting a one business day margin call, as well as in regulation § 1.44(g) in setting LSOC compliance calculations for separate accounts. This definition was not included in the First Proposal.

Request for Comment

Question 4: How should the proposed definition of ''business day'' address days when securities and other markets are closed? For instance, should the Commission address in the definition days when such other markets are open, or create an exception for days when such markets are closed on a prescheduled basis? (*E.g.,* a requirement rolls over to the next day that the market is open.) What liquidity challenges or other risks would result from such an exception? How do FCMs and customers currently address these cases?

Question 5: In the proposed definition of ''undermargined amount'' in proposed regulation § 1.44(a), the term ''margin deposits currently remaining'' does not include a deduction for ''haircuts'' on non-cash collateral or collateral posted in alternate currencies. This is consistent with the approach taken with respect to calculating undermargined amounts for purposes of determining requirements for residual interest in regulations §§ 1.22(c)(1), 22.2(f)(6)(i), and 30.7(f)(1)(ii). By contrast, in a number of cases, Commission regulations require FCMs, in determining the amount of customer debit/deficit balances secured by readily marketable securities, to apply securities haircuts set forth in SEC Rule 15c3–1(c)(2).[116] Similarly, some exchanges require members, in determining the amount of margin they are required to collect from their customers, to apply haircuts to securities collateral in amounts consistent with SEC Rule 240.15c3–1, and to apply haircuts to commodities in amounts consistent with the inventory haircuts specified in Commission regulation § 1.17(c)(5)(ii).[117]

Should the definition of ''undermargined amount'' apply haircuts to the value of customer collateral held by the FCM? If so, should the amount of such haircuts be based on SEC rule 240.15c3–1 and Commission regulation § 1.17(c)(5)(ii), or some other basis?

E. Proposed Regulation § 1.44(b)

As discussed above, the Commission proposes regulation § 1.44(b) to apply directly to FCMs, whether clearing or non-clearing, the same Margin Adequacy Requirement that DCOs are required to apply to their clearing FCMs pursuant to regulation § 39.13(g)(8)(iii). Proposed regulation § 1.44(b) provides that an FCM shall ensure that a customer does not withdraw funds from its accounts with such FCM unless the net liquidating value plus the margin deposits remaining in the customer's account after such withdrawal are sufficient to meet the customer initial margin requirements with respect to all products held in such customer's account, except as provided in proposed regulation § 1.44(c), which allows for separate account treatment under ordinary course of business conditions.[118]

The Commission acknowledges that real-time calculation of margin adequacy with respect to a potential withdrawal may prove impracticable. Instead, the Commission seeks to articulate a standard for the time as of which such calculation shall be made that is consistent with the Commission's requirements for calculation of undermargined amounts for purposes of an FCM's residual interest calculations. Regulations §§ 1.22(c)(2), 22.2(f)(6)(ii), and 30.7(f)(ii)(B) require each FCM to compute such undermargined amounts based on the information available to the FCM as of the close of each business day for futures customer accounts, Cleared Swaps Customer Accounts, and 30.7 accounts, respectively. To ensure such consistency, proposed regulation § 1.44(b)(1) provides that the sufficiency of the amount in a customer's account to meet customer initial margin requirements following a potential withdrawal shall be calculated as of close of business on the previous business day.

In order to address circumstances in which the previous day is a holiday on which markets, but not banks, may be open, proposed regulation § 1.44(b)(2) further provides that, for purposes of

[113] The definition of ''undermargined amount'' in proposed regulation § 1.44(a) is different from, and simpler than, the definitions of ''undermargined amount'' for the purpose of residual interest calculations in regulations §§ 1.22(c)(1), 22.2(f)(6)(i), and 30.7(f)(1)(ii). The calculations in the latter cases are required to take into account information at the close of business on day *T–1* that will be used to calculate a residual interest requirement on day *T,* as well as payments that may be received on day *T,* and the elimination of double counting of debit balances.

[114] The definition of ''undermargined amount'' in proposed regulation § 1.44(a) further provides that, with respect to positions for which maintenance margin is not specified, ''margin requirements'' shall refer to the initial margin required for such positions.

[115] ''Performance bond'' secures the performance by a customer to meet its variation margin payment obligations to its FCM (or the performance of variation margin payment obligations of an FCM to the clearinghouse, or to an intermediary upstream FCM).

[116] *See, e.g.,* regulations §§ 1.32(b) and 22.2(f)(5)(iii).

[117] *See, e.g.,* CME Rule 930.C, ICE Futures U.S. Rule 5.03(j).

[118] Consistent with the existing Margins Handbook, the Margin Adequacy Requirement is based on initial margin requirements rather than any lower maintenance margin requirement. *See* JAC Margins Handbook at p. 10–1 (''Margin Funds Available for Disbursement = Net Liquidating Value + Margin Deposits − Initial Margin Requirement ≥0''); *see also supra* n. 14 and accompanying text.

proposed regulation § 1.44(b)(1)'s margin adequacy calculation requirements, where the previous day (excluding Saturdays and Sundays) is a holiday, as defined in proposed regulation § 1.44(a), where any DCM on which the FCM trades is open for trading, and where an account of any of the FCM's customers includes positions traded on such a market, the margin adequacy calculation shall instead be made as of the close of business on such holiday.[119]

The Commission notes that proposed regulation § 1.44(b)'s requirements related to the timing of the margin adequacy calculation required by the same section are intended to represent a minimum standard, and are not intended to prevent an FCM from exercising its judgment in connection with good risk management practice to prevent the disbursement of customer funds based on intervening intraday market movements resulting in losses to a customer account between the calculation benchmark set forth in proposed regulation § 1.44(b) and the time at which a customer requests to withdraw funds. Ensuring that customers do not withdraw funds from their accounts at FCMs if such withdrawal would create or exacerbate an initial margin shortfall is reasonably necessary from a risk management perspective, in that it reduces the likelihood and extent of the risk that the FCM must cover losses due to a default by the customer on obligations that exceed the margin actually held by the FCM. Similarly, because customer funds are held by an FCM in omnibus accounts, this prohibition will reduce the likelihood and extent of the risk that the FCM will effectively use the margin of other customers to ''margin or guarantee the trades or contracts, or to secure or extend the credit of'' a customer that was permitted to withdraw margin in a manner that created or exacerbated an undermargined condition,[120] whether the duty to prevent such withdrawals falls on DCOs acting on their member FCMs, or directly on FCMs. Because regulation § 39.13(g)(8)(iii) applies only to DCOs (which in turn can only apply regulation § 39.13(g)(8)(iii)'s Margin Adequacy Requirement to their clearing member FCMs), and given the strong trend of the comments in favor of addressing these issues in a manner uniform among all types of FCMs directly in part 1 rather than indirectly through part 39, the Commission now views it as reasonably necessary to extend to all FCMs the requirement to prevent such under-margining scenarios.

Accordingly, the Commission preliminarily believes that proposed regulation § 1.44(b), which will apply a similar Margin Adequacy Requirement directly to FCMs, both clearing and non-clearing, would further serve to protect customer funds and mitigate systemic risk, thus effectuating CEA section 4d(a)(2), 4d(f)(2), and 4(b)(2)(A)[121] and accomplishing the purposes of ''avoidance of systemic risk'' and ''protecting all market participants from . . . misuses of customer assets.''[122]

F. Proposed Regulation § 1.44(c)

Proposed regulation § 1.44(c) sets forth the fundamental terms and conditions for separate account treatment. As a general matter, those terms and conditions are substantially the same as in CFTC Letter No. 19–17, and in the First Proposal, except that the FCM may choose to engage in separate account treatment without a DCO specifically authorizing such treatment. Proposed regulation § 1.44(c) provides that an FCM may, only during the ordinary course of business, as that term is defined in proposed regulation § 1.44, treat the separate accounts of a separate account customer as accounts of separate entities for purposes of proposed regulation § 1.44(b),[123] if such FCM elects to do so as specified in proposed regulation § 1.44(d). Proposed regulation § 1.44(c) further provides that an FCM that has made such an election shall comply with the risk-mitigating conditions set forth further in proposed regulation § 1.44 and maintain written internal controls and procedures designed to ensure such compliance.

The Commission preliminarily believes that permitting FCMs to treat the separate accounts of separate account customers as accounts of separate entities for purposes of proposed regulation § 1.44(b), subject to the risk-mitigating conditions set forth further in proposed regulation § 1.44, accomplishes the CEA's purpose of promoting responsible innovation, while also maintaining continuity of robust customer fund protection and risk mitigation.[124] Compliance with those conditions can best be achieved if the FCM maintains written internal controls and procedures designed to ensure such compliance.

G. Proposed Regulation § 1.44(d)

Proposed regulation § 1.44(d) provides that an FCM may elect to treat the separate accounts of a customer as accounts of separate entities for purposes of proposed regulation § 1.44(b). In order to do so, an FCM shall include the customer on a list of separate account customers maintained in its books and records. Such list shall include the identity of each separate account customer, as well as the identity of each separate account of such customer. The FCM is required to keep such list current. Furthermore, the first time that an FCM chooses to include a customer on a list of separate account customers, the FCM is required to provide notification of the election to allow separate account treatment for customers in accordance with the process specified in regulation § 1.12(n)(3).[125] For the avoidance of doubt, the notification of such election would remain a one-time notification made the first time the FCM begins providing separate account notification for a customer. Successive notifications would not be required for each additional customer for which the FCM provides separate account treatment. Furthermore, the FCM would need only provide notification of the election, and would not be required to include the identity of the separate account customer. Proposed regulation § 1.44(d) is intended to ensure that DSROs are able effectively to monitor and regulate FCMs that engage in separate account treatment, and that FCMs have the records necessary to understand which accounts receive separate account treatment for purposes of monitoring

[119] Proposed regulation § 1.44(b)(2), and proposed regulation § 1.44(f)(7), discussed below, are consistent with JAC Regulatory Alert 22–02, which provides that an FCM must issue margin calls to customers on holidays where futures markets are open and U.S. banks are closed. The margin calls are calculated based on information as of the close of the previous business day (*i.e.,* the business day prior to the holiday) and the FCM does not count the holiday for purposes of aging the margin call. JAC Regulatory Alert 22–01, Mar. 30, 2022, available at *www.jacfutures.com.*

[120] *Cf.* CEA 4d(a)(2), 7 U.S.C. 6d(a)(2) (an FCM may not use the money or property of one customer ''to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held.'')

[121] 7 U.S.C. 6d(a)(2), 6d(f)(2), and 6(b)(2)(A).

[122] CEA 3(b), 7 U.S.C. 5(b). *See,* as discussed above, section 8a(5) of the CEA, 7 U.S.C. 12a(5), authorizing the Commission to make and promulgate such rules and regulation as in the Commission's judgment are reasonably necessary to effectuate any of the provisions, or to accomplish any of the purposes, of the CEA.

[123] As noted above, proposed regulation § 1.44(b) is intended to serve as an analog to regulation § 39.13(g)(8)(iii) for FCMs.

[124] *See* CEA 3(b), 8a(5).

[125] *See* 17 CFR 1.12(n)(3). Once an FCM provides notice in the first instance that it will apply separate account treatment to one or more customers, it would not be required to provide the same notification each time it applies separate account treatment to a new or additional customer.

compliance with the proposed regulation.

The First Proposal proposed to require a clearing FCM to (i) provide a one-time notification to its DSRO and any DCO of which it is a clearing member that it will apply such treatment; (ii) maintain and keep current a list of all separate accounts receiving such treatment; and (iii) conduct a review of such records of accounts receiving separate treatment no less than quarterly.

With respect to the proposed one-time notice requirement for separate account treatment, the JAC in its comment contended that such notice (and other notices required under the First Proposal) should be made to any DCO permitting separate account treatment of which a clearing FCM is a member, but should not be required to be provided to the clearing FCM's DSRO, as monitoring for compliance with separate account treatment requirements would not fall under the oversight of the DSRO.[126] Because the Commission is no longer proposing to codify the no-action position in CFTC Letter No. 19–17 in part 39, it is no longer proposing to require that notifications made to DSROs additionally be made to every DCO of which the notifying FCM is a member. Furthermore, the Commission believes notice to the Commission, and to DSROs (who review FCMs' compliance with the Commission's part 1 regulations) pursuant to proposed regulation § 1.44(d)(2) is proper.

With respect to the proposed recordkeeping requirement, CME opined in its comment that clearing FCMs should be required to be able to produce, upon request of the relevant DCO or the Commission, a current list of accounts receiving separate treatment.[127] The Commission believes such requirement is already provided for by the requirement in proposed regulation § 1.44(d) to maintain and keep current such a list, combined with Commission regulation § 1.31(d)'s requirement for records entities to produce regulatory records promptly upon request by Commission representatives.

The Commission notes that, in proposing the recordkeeping requirement in this Second Proposal, it has determined not to include the First Proposal's proposed requirement that an FCM review records of accounts receiving separate treatment no less than quarterly, as the Commission views the objective of such requirement—the keeping of accurate and current records—as being subsumed by this Second Proposal's proposed requirement to maintain and keep current a list of accounts receiving separate treatment.

H. Proposed Regulation § 1.44(e)

Proposed regulation § 1.44(e) enumerates events that would be inconsistent with the ordinary course of business, as that term is defined in proposed regulation § 1.44(a), and sets forth requirements related to the cessation and resumption of permitting disbursements on a separate account basis upon, respectively, the occurrence and cure of certain non-ordinary course of business events. Each of these events would raise important concerns about the financial resiliency of the FCM or one or more of its separate account customers.[128]

These events are divided into two categories: (i) those that concern the separate accounts of a particular separate account customer, and the occurrence of any one of which would require the FCM to cease permitting disbursements on a separate account basis with respect to all accounts of that customer; and (ii) those that concern the financial status of the FCM itself, and the occurrence of any one of which would require the FCM to cease permitting disbursements on a separate account basis with respect to all of its separate account customers.

It is important to note, however, that under this proposal, while a separate account customer is outside the ordinary course of business as defined in proposed regulation § 1.44(a), it is only the privilege of permitting disbursements on a separate account basis, pursuant to proposed regulation § 1.44(c), with respect to that customer and that customer's separate accounts, that is terminated (or suspended). So long as a customer remains a separate account customer, whether or not within the ordinary course of business, then the FCM is required to comply with the requirements in proposed regulation §§ 1.44(g) and (h), including with respect to the relevant provisions addressed in regulations §§ 1.17, 1.20, 1.22, 1.23, 1.32, 1.55, 1.58, 1.73, 22.2, 30.7, and 39.13(g)(8)(i) with respect to that customer and all of that customer's separate accounts. Similarly, if it is the FCM that is outside the ordinary course of business, it is only the privilege of permitting disbursements on a separate account basis with respect to any of the FCM's separate account customers and their separate accounts that is terminated (or suspended). The FCM continues to be required to comply with the requirements in regulation §§ 1.44(g) and (h), including with respect to the relevant provisions described above, with respect to all of its separate account customers and their separate accounts.

The first category of events is as follows:

- (1)(i) The separate account customer, including any separate account of such customer, fails to deposit initial margin or maintain maintenance margin or make payment of variation margin or option premium as specified in proposed regulation § 1.44(f).[129]
- (ii) The occurrence and declaration by the FCM of an event of default as defined in the account documentation executed between the FCM and the separate account customer.
- (iii) A good faith determination by the FCM's CCO, one of its senior risk managers, or other senior manager, following such FCM's own internal escalation procedures, that the separate account customer is in financial distress, or there is significant and bona fide risk that the separate account customer will be unable promptly to perform its financial obligations to the FCM, whether due to operational reasons or otherwise.
- (iv) The insolvency or bankruptcy of the separate account customer or a parent company of such customer.
- (v) The FCM receives notification that a board of trade, a DCO, a self-regulatory organization (SRO) as defined in regulation § 1.3 or section 3(a)(26) of the Securities Exchange Act of 1934, the Commission, or another regulator [130] with jurisdiction over the separate account customer, has initiated an action [131] with respect to such customer based on an allegation that the customer is in financial distress.
- (vi) The FCM is directed to cease permitting disbursements on a separate account basis, with respect to the

[126] JAC Comment Letter.

[127] CME Comment Letter.

[128] For example, while the bankruptcy of an FCM or a separate account customer would have direct effects, the bankruptcy of an FCM or separate account customer's parent company would also portend financial challenges for, respectively, the FCM or separate account customer (*e.g.,* if the parent company decided to liquidate its subsidiaries in bankruptcy). Experience in the bankruptcies of, *e.g.,* Refco and Lehman, demonstrates that when one member of an affiliate financial company structure files for bankruptcy, other affiliates soon follow.

[129] *I.e.,* the one business day margin call requirement.

[130] *E.g.,* the SEC or a foreign regulator.

[131] In this context, the term ''initiate an action'' is intended to include the filing of a complaint or a petition to take action against an entity, or an analogous process. The initiation or conduct of an investigation would not be sufficient to constitute ''initiating an action'' in this context.

separate account customer, by a board of trade, a DCO, an SRO, the Commission, or another regulator with jurisdiction over the FCM, pursuant to, as applicable, board of trade, DCO, or SRO rules, government regulations, or law.

The second set of events is as follows:

- (2)(i) The FCM is notified by a board of trade, a DCO, an SRO, the Commission, or another regulator with jurisdiction over the FCM, that the board of trade, the DCO, the SRO, the Commission, or other regulator, as applicable, believes the FCM is in financial or other distress.
- (ii) The FCM is under financial or other distress as determined in good faith by its CCO, senior risk managers, or other senior management.
- (iii) The insolvency or bankruptcy of the FCM or a parent company of the FCM.

Proposed regulation § 1.44(e)(3) provides that the FCM must provide notice to its DSRO and to the Commission of the occurrence of any of the events suspending or terminating separate account treatment for one or more separate account customers. The notice must be provided to the DSRO and the Commission in accordance with the process specified in regulation § 1.12(n)(3). The notice also must identify the event and, if applicable, the customer. The FCM would be required to provide such notice promptly in writing no later than the next business day following the date on which the FCM identifies or has been informed that the relevant event has occurred. The notification required upon exiting the ordinary course of business is intended to ensure that the Commission and DSROs will be apprised of the occurrence of non-ordinary course of business events, and will actively communicate with and monitor an FCM with respect to the resolution of such events (*i.e.,* where an FCM attempts to reenter ordinary course of business conditions).

Proposed regulation § 1.44(e)(4) provides an avenue for an FCM that has experienced a non-ordinary course of business event with respect to itself or a customer to return to the ordinary course of business and resume separate account treatment for itself or its customers, as may be the case. Proposed regulation § 1.44(e)(4) provides that an FCM that has ceased permitting disbursements on a separate account basis to a separate account customer due to the occurrence of a non-ordinary course of business event, with respect to that specific separate account customer, or with respect to all such customers, may resume permitting disbursements to such customer(s) on a separate account basis if such FCM reasonably believes, based on new information, that those circumstances triggering the event have been cured, and such FCM documents in writing the factual basis and rationale for its conclusion. However, proposed regulation § 1.44(e)(4) also provides that, if the circumstances triggering cessation of separate account treatment were an action or direction by a board of trade, a DCO, an SRO, the Commission, or another regulator with jurisdiction over the separate account customer or the FCM, then cure of those circumstances would require the withdrawal or other appropriate termination of such action or direction by that entity.

That permitting disbursements on a separate account basis should be discontinued (or at least suspended) under certain circumstances is reflected in CME's recommendation, preceding issuance of CFTC Letter No. 19–17, that separate account treatment be permitted only during the ordinary course of business. As CME explained, FCMs should maintain the flexibility to determine that either the customer or the FCM itself is in distress and ''pause'' disbursements until the customer's other account can demonstrably meet the call to deposit funds.[132] Similarly, as CME noted, an FCM should not be purposely releasing funds to a customer when the customer's overall account is in deficit, as doing so may create a shortfall in segregated, secured, or Cleared Swaps Accounts in the event the FCM becomes insolvent.[133] However, the Commission acknowledges that in some instances, an FCM or customer may exit a state of financial, operational, or other distress, such that resumption of separate account treatment would be appropriate. By explicitly providing FCMs with an avenue to resume separate account treatment consistent with the resumption of the ordinary course of business, the Commission seeks to incentivize transparency between FCMs and their DSROs and Commission staff with respect to conditions at the FCMs or customers that could indicate operational or financial distress and, more generally, the risk management program at the FCM.

Proposed regulation § 1.44(e) is designed to ensure that disbursements are permitted on a separate account basis only during the routine operation of the FCM's business relationship with its customer. Certain events signaling financial or operational distress of the FCM or customer are inconsistent with the normal operation of the business relationship between the FCM and its customer. The Commission believes that, when such events occur, and throughout the duration of their occurrence, suspending FCMs' ability to provide for separate account treatment with respect to the Margin Adequacy Requirement is reasonably necessary to accomplish the goals of protecting customer funds and mitigating systemic risk.

The list of non-ordinary course of business events proposed herein, as well as the criteria and process for an FCM to resume separate account treatment, remains the same as proposed in the First Proposal, except that the Commission has changed certain aspects of the proposed regulation to account for placement of the requirement in part 1 (and thus applicability to all FCMs, including non-clearing FCMs), and notification of non-ordinary course of business events to the Commission and to the FCM's DSRO through the process specified by regulation § 1.12(n)(3) (*i.e.,* deleting the First Proposal's separate requirement for a clearing FCM to provide notice to any DCO of which it is a member that it has experienced a non-ordinary course of business event (in addition to its DSRO, as provided for in CFTC Letter No. 19–17), and deleting the requirement for a clearing FCM to provide separate notice to its DSRO and any DCO of which it is a member that it will resume separate account treatment).

In its comment responding to the First Proposal, CME recommended that the Commission add certain additional events to the list of non-ordinary course of business events: (1) when an FCM is under-capitalized; (2) when an FCM is not in compliance with segregated, secured, or Cleared Swaps requirements; (3) when an FCM has filed notice of non-current books and records; and (4) when an FCM has filed notice of a material inadequacy in internal controls that impact its ability to remain in compliance with Commission regulations.[134] The JAC similarly recommended adding as non-ordinary course of business event (1) when an FCM does not maintain required CFTC capital, futures customer funds, 30.7 customer funds, Cleared Swaps Customer Collateral, residual interest compliance or LSOC compliance, or does not comply with the First Proposal's financial computation requirements; and (2) when the FCM does not maintain current books and records or has a

[132] CME Letter.

[133] *Id.*

[134] CME Comment Letter.

material inadequacy in internal controls.[135] The foregoing events are generally matters for which an FCM must already make a report to, *inter alia,* the Commission and the DSRO pursuant to regulation § 1.12.[136]

CME additionally opined that the Commission should make clear that any FCM undergoing an event that in the FCM's opinion is inconsistent with the ordinary course of business should be considered outside the ordinary course of business until such event is resolved, and clarify that the list of non-ordinary course of business events is not exhaustive and is subject to the discretion of the FCM in accordance with its risk management practices.[137]

In this Second Proposal, the Commission has determined not to adjust the list of non-ordinary course of business events, or add additional conditions to exiting or resuming separate account treatment, because the Commission believes the list of non-ordinary course of business events proposed herein is sufficiently flexible to capture CME and JAC's recommended additional non-ordinary course of business events, and is therefore not exhaustive.[138] In addition, the FCM's DSRO will generally have received notification of the occurrence of these events consistent with the requirements of regulation § 1.12, and could, if it deems necessary, take action that would result in the suspension of separate account treatment pursuant to proposed regulation § 1.44(e)(1)(vi) or (e)(2)(i).

FIA opposed the further definition of ''ordinary course of business'' through enumerated events, arguing that as long as a customer timely meets margin requirements and is not subject to bankruptcy, an FCM should be permitted to allow separate account treatment.[139] The Commission notes that, while there may be commercial and operational merits to FIA's more flexible proposed approach, a number of non-ordinary course of business events are anticipatory—intended to result in cessation of separate account treatment when the customer is in distress, but before such customer reaches the point of bankruptcy or not being able to post margin. FIA's comment also does not consider non-ordinary course of business events occurring at the FCM, rather than just at the customer.

FIA additionally asserted that requirements in the First Proposal for DCOs permitting separate account treatment to require their clearing FCMs to communicate to their DSRO and any DCO of which they are a member (i) the occurrence of non-ordinary course of business events and (ii) the resumption of a state of ordinary course of business, would create a new filing requirement without any perceived benefit and incorrectly imply that separate accounts and their customers pose particular risk management challenges.[140] The Commission notes that, as a condition of the staff no-action position provided in CFTC Letter No. 19–17, a DCO permitting separate account treatment needed to require a clearing FCM to report to its DSRO the occurrence of a non-ordinary course of business event. The First Proposal's proposed requirement to include any DCO of which a clearing FCM is a member as an additional recipient for reports required of the FCM, would no longer apply under this proposal.

The JAC in its comment argued that an FCM exiting or reentering the ordinary course of business (as well as starting separate account treatment) should not be required to notify its DSRO of that fact on grounds that monitoring for compliance with the proposed separate account treatment does not fall under the oversight responsibilities of an SRO, DSRO, or the JAC, and that it would not make sense for a DCO to implement rules that would require a clearing FCM to notify its DSRO of activity specifically governed by the DCO's rules.[141] Under this Second Proposal, however, separate account treatment will be governed by the Commission's part 1 regulations, and thus would fall within oversight responsibilities of an SRO or DSRO, or the oversight program maintained by the JAC.

The Commission further notes that, under this Second Proposal, the notice requirements for FCMs (to provide notice to the Commission and DSRO of the occurrence of a non-ordinary course of business event via the process set forth in regulation § 1.12(n)(3)) are substantially similar to their counterparts in CFTC Letter No. 19–17 (requiring notice of a non-ordinary course of business event to a DSRO, although not expressly to the Commission), and that the Commission is not now proposing a separate requirement for notice to DCOs of exit from and reentry into separate account treatment (or of initiation of separate account treatment).

In its comment, SIFMA–AMG asserted that the Commission's proposed definition of ''ordinary course of business'' did not provide clarity on the meaning of ''standard day-to-day operation,'' noting that DCOs instead would be required to continuously monitor for a series of events.[142] SIFMA–AMG also asserted that some non-ordinary course of business events do not appear to rise to the level of significance to suggest they are not ordinary course of business, such as the failure of a customer to make a maintenance margin payment, and that other events require discretion and subjective analysis.[143] SIFMA–AMG recommended the Commission redefine the term ''ordinary course of business'' and clearly delineate events such as default or bankruptcy that are limited instances that would not be considered ordinary course of business. SIFMA–AMG did not propose an alternative

[135] JAC Comment Letter.

[136] *See, e.g.,* regulation § 1.12, which requires an FCM to provide written notice to the Commission and to the firm's DSRO if the FCM is undercapitalized (regulation § 1.12(a)); maintains a level of adjusted net capital that is below established ''early warning levels'' (regulation § 1.12(b)); fails to maintain current books and records (regulation § 1.12(c)); discovers or is notified by an independent public accountant of the existence of any material inadequacy in the firm's accounting system, the internal accounting controls, or the procedures for safeguarding customer and firm assets (regulation § 1.12(d)); is undersegregated with respect to futures customer funds, Cleared Swaps Customer Collateral, or 30.7 customer funds (regulation § 1.12(h)); or does not hold sufficient funds in segregated accounts to meet targeted residual interest amounts or maintains an amount of residual interest that is less than the sum of the undermargined amounts in customer accounts (regulation § 1.12(j)).

[137] CME Comment Letter.

[138] *E.g.,* proposed regulation § 1.44(e)(1)(iii) (A good faith determination by the FCM's CCO, one of its senior risk managers, or other senior manager, following such FCM's own internal escalation procedures, that the separate account customer is in financial distress, or there is significant and bona fide risk that the separate account customer will be unable promptly to perform its financial obligations to the FCM, whether due to operational reasons or otherwise.) could encompass a wide variety of conditions that could result in a cessation of separate account treatment.

[139] FIA Comment Letter.

[140] *Id.*

[141] JAC Comment Letter.

[142] SIFMA–AMG Comment Letter. With respect to continuous monitoring, there are six events (proposed regulation § 1.44(e)(1)(i) through (vi)) that are ''inconsistent with the ordinary course of business with respect to the separate accounts of a particular separate account customer.'' The first three of these include a payment default and determinations by the FCM or its employees, all of which should otherwise be monitored by an FCM as part of its normal risk management. The last two involve cases where the FCM either ''receives notification'' or ''is directed,'' neither of which requires monitoring by the FCM. By proposed regulation § 1.44(e)(1)(iv), the FCM *is* required to monitor whether a separate account customer has become ''insolvent or bankrupt''—conditions that SIFMA–AMG agrees are outside the ordinary course of business. Monitoring for the insolvency or bankruptcy of a client would also appear to be a basic part of an FCM's credit risk management, regardless of separate account treatment.

[143] *Id.*

definition of ''ordinary course of business.''

As discussed above, the Commission notes that a number of non-ordinary course of business events are anticipatory, and thus are intended to result in cessation of separate account treatment *before* a customer or FCM reaches the point of default or bankruptcy. Proposed regulation § 1.44(e) is intended to provide concrete criteria for when a customer or FCM is operating outside the Commission's definition of ''ordinary course of business'' in proposed regulation § 1.44(a) that are sufficiently flexible to account for the myriad ways in which a customer or FCM can enter a state of financial or operational distress, such that providing for separate account treatment would no longer be prudent from a risk management perspective.

I. Proposed Regulation § 1.44(f)

Proposed regulation § 1.44(f) requires that each separate account must be on a one business day margin call, subject to certain requirements designed to further define what constitutes a one business day margin call. Providing for a one business day margin call, as defined in this regulation § 1.44(f), ensures that margin shortfalls are timely corrected, and that a customer's inability to meet a margin call is timely identified. However, in certain circumstances, it may be impracticable for payments to be received on a same-day basis due to the mechanics of international payment systems (*e.g.,* time zones and schedules of correspondent banks). In proposing requirements to define timely payment of margin for purposes of the standard set forth in proposed regulation § 1.44(f), the Commission's goal is to establish requirements that reflect industry best practices among FCMs and customers.[144]

Specifically, the Commission understands that, while margin calls made in the morning in the U.S. Eastern Time Zone (ET) are typically capable of being met on a same-day basis when margin is paid in United States dollars (USD) and Canadian dollars (CAD), the operation of time zones and banking conventions in other jurisdictions may necessitate additional time when margin is paid in other currencies. For example, the Commission understands, based on discussions with market participants, that margin paid in Japanese yen (JPY) and certain other currencies is typically received two business days after a margin call is issued, and margin paid in British pounds (GBP), euros (EUR), and certain other non-USD/CAD/JPY currencies is typically received one business day after a margin call is issued.

Proposed regulation § 1.44(f)(1) provides that, except as explicitly provided in proposed regulation § 1.44(f), if, as a result of market movements or position changes on the previous business day, a separate account is undermargined (*i.e.,* the undermargined amount for the account is greater than zero), the FCM shall issue a margin call for that separate account for at least the amount necessary for the separate account to meet the initial margin required by the applicable exchanges or clearing organizations (including, as appropriate, the equity component or premium for long or short option positions) for the positions in the separate account.[145] Such call must be met by the applicable separate account customer no later than the close of the Fedwire Funds Service on the same business day, consistent with the industry standard for when 90–95% of margin deficits are cured.[146]

In light of challenges to same-day settlement posed by margining in certain currencies, as described above, and in recognition of the particular banking conventions around payments in other currencies, proposed regulation § 1.44(f)(2) provides that payment of margin in certain currencies listed in proposed Appendix A to part 1 shall be considered in compliance with the requirements of proposed regulation § 1.44(f) provided they are received by the applicable FCM no later than the end of the second business day after the day on which the margin call is issued.

Furthermore, proposed regulation § 1.44(f)(3) provides that payment of margin in fiat currencies other than USD, CAD, or currencies listed in proposed Appendix A to part 1 shall be considered in compliance with the requirements of proposed regulation § 1.44(f) if received by the applicable FCM no later than the end of the business day after the business day on which the margin call was issued.

In the First Proposal, the Commission proposed that:

- Subject to certain exceptions, if the margin call is issued by 11:00 a.m. ET on a United States business day (as that term was proposed to be defined), it must be met by the applicable customer no later than the close of the Fedwire Funds Service on the same United States business day. In no case can a clearing member contractually agree to delay issuing such a margin call until after 11:00 a.m. ET on any given United States business day or to otherwise engage in practices that are intended to circumvent the one business day margin call standard by causing such delay.
- Payment of margin in JPY shall be considered in compliance with the requirements of the one business day margin call standard if received by the applicable clearing member by 12:00 p.m., ET, on the second United States business day after the business day on which the margin call is issued.[147]
- Payment of margin in fiat currencies other than USD, CAD, or JPY shall be considered in compliance with the requirements of the one business day margin call standard if received by the applicable clearing member by 12:00 p.m., ET, on the United States business day after the business day on which the margin call is issued.

With respect to the timing of margin payments, CME, in its comment in response to the First Proposal, opined that the Commission should encourage FCMs to collect margin in all currencies as quickly as feasible.[148] While the

[144] An analysis by FIA indicated that, for the FCMs studied, on average more than 90% of margin deficits were collected by the close of business on the day following the market movements creating such deficits. For a majority of the FCMs studied, 95% of margin deficits were collected by that time. *See* Letter from Barbara Wierzinski, General Counsel, FIA, to Melissa Jurgens, Secretary, CFTC, Costs of the Proposed Residual Interest Requirement Compared to the FIA Alternative, at 3, available at *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59283&SearchText=FIA*.

[145] The undermargined amount is based on maintenance margin, which may be lower than initial margin. However, if an account falls below the maintenance margin level, the amount of the margin call is generally required to be the amount necessary to bring the account back to the (potentially higher) initial margin level.

[146] The Fedwire Funds Service is an electronic funds transfer service commonly used for settlement and clearing arrangements. The service currently closes at 7:00 p.m. ET. For purposes of the Fedwire Funds Service, Federal Reserve Banks observe as holidays all Saturdays, all Sundays, and the holidays listed on the Federal Reserve Banks' Holiday Schedules. *See* The Federal Reserve, Fedwire® Funds Service and National Settlement Service Operating Hours and FedPayments® Manager Hours of Availability, available at *https://www.frbservices.org/resources/financial-services/wires/operating-hours.html*. Because the Fedwire Funds Service hours of operations may be subject to change, the Commission has determined to tie the timeframe to fulfill the one business day margin call requirements of proposed regulation § 1.44(f) to the Fedwire Funds Service's closing rather than an absolute time.

[147] In the First Proposal, the Commission requested comment on whether there are other currencies besides JPY where the relevant banking conventions render payment before the second U.S. business day after a margin call is issued impracticable; to specifically identify any such currencies; and to provide specifics about the operational issues involved with respect to each such currency.

[148] CME Comment Letter. In addition, the Commission requested comment on whether, in anticipation of potential developments with respect

Continued

Commission does encourage FCMs to collect margin in all currencies as quickly as feasible, the Commission understands that compliance challenges could arise with respect to FCMs attempting to determine whether they are meeting an ''as quickly as feasible'' standard, and chooses to maintain the more definite standard set forth in this proposed regulation, subject to certain revisions with respect to the specific margin payment timing requirements as discussed below.

CME also opined that the Commission should treat all currencies equally where relevant banking conventions render payment impracticable before the second U.S. business day after a margin call is made (*i.e.,* such provision should not pertain solely to JPY).[149]

In this Second Proposal, the Commission again requests comment regarding the inclusion of currencies with respect to proposed Appendix A to part 1 (*i.e.,* currencies for which payment of margin may be impracticable before the second business day after a margin call is made) and proposes a process for the addition or removal of currencies with respect to proposed Appendix A to part 1 on a going-forward basis.

FIA commented that the one business day margin call requirements in the First Proposal were at once too broad with exceptions that were too narrow.[150] FIA asserted that while neither the CEA nor Commission regulations specify when an FCM must make a margin call, all customer accounts are subject to a one business day margin call under certain CME and ICE Futures U.S. rules as well as the JAC Margins Handbook.[151] FIA further noted that while neither the CEA nor Commission regulations specify when a margin call must be met, the JAC Margins Handbook provides that margin calls must be met within a ''reasonable time,'' defined as ''less than five business days for customers and less than four business days for noncustomers and omnibus accounts . . . counted from and includ[ing] the day the account became undermargined,'' and CME rules provide that a clearing member may deem a ''reasonable time'' to mean one hour.[152]

FIA also asserted that Commission regulations (*e.g.,* regulations §§ 1.22(c) and 1.17(c)(5)(viii)) already provide a strong incentive to ensure margin calls are met no later than the following (or, at the latest, second) business day after the event giving rise to the margin call, and that FCMs generally do make margin calls within one business day.[153] Additionally, FIA argued that the proposed regulation would impose a new recordkeeping requirement because FCMs would have to record the precise time a margin call is issued and, likely, met.[154] FIA recommended that instead the Commission should instead provide that FCM policies and procedures assure all margin calls are met on no more than a one business day margin call basis except as a result of administrative error or operational constraint.[155]

With respect to the timing of margin payments in JPY, FIA argued that the Commission's proposal was too restrictive and that such requirement should focus on the date payment is irrevocably initiated rather than received.[156] With respect to the timing of margin payments in CAD, JPY, and other non-USD currencies, FIA opined that the Commission's proposal was arbitrary and unworkable.[157]

In the Commission's view, a ''one business day margin call'' should be defined beyond the term itself. FIA did not propose any such definition, and the Commission believes market participants should have clarity with respect to the criteria for a one business day margin call, with clear lines with respect to what conduct is and is not compliant. Additionally, while FCMs may ensure that margin calls are generally met within one business day, for purposes of separate account treatment, the Commission wishes to ensure that such margin calls are (subject to specified exceptions) always met on a one business day basis. With respect to FIA's comment that the definition of a one business day margin call should be based on when payment is irrevocably initiated, the Commission believes such suggestion may be impracticable, given the challenge to an FCM in having information that will reliably prove when a customer has initiated payment and information on whether and when such payments are ''irrevocable.''

However, in the Second Proposal, the Commission has deleted its prior proposed specific timing requirements with respect to the making and meeting of margin calls on a one business day basis. Instead, if an account is undermargined as a result of the prior day's market moves, a margin call must be made and met on a same-day basis, with the allowance of either one or two additional business days for margin payments in certain non-USD/CAD currencies.[158] The Commission expects such alteration will also address FIA's concerns regarding the recording of precise timestamps with respect to when margin calls have been made or met.

In its comment, the JAC requested that the Commission clarify that its one business day margin call requirements do not impact existing regulations regarding the aging of margin calls or clearing FCMs' financial reporting, regardless of the time of day the FCM issues the margin call or if the customer is outside the U.S.[159] The Commission believes the proposed regulation accomplishes this by specifying that the definitions contained within proposed regulation § 1.44(a) apply only for purposes of proposed regulation § 1.44, and that the margin payment timing requirements of proposed regulation § 1.44(f) apply solely for purposes of proposed regulation § 1.44.

The JAC also requested that the Commission clarify that its proposed codification does not affect the balances recorded in customers' accounts, or the undermargined amount which the FCM must include in its residual interest and LSOC compliance calculations.[160] The Commission notes, with respect to the calculation of balances in customers' accounts and the undermargined amount which the FCM must include in its residual interest and LSOC compliance calculations, such figures

to the use of central bank digital currencies or other digital assets, the proposed regulation should explicitly address the timing of payment of margin in digital assets. CME, the only commenter to respond to this question, opined that this question should be addressed in a separate request for comment. *Id.* The Commission is not proposing to address the timing of margin payments in digital assets in the present proposal, other than to note that, under regulation § 1.44(f) as currently proposed, payments of margin in digital assets that are not fiat currencies (*i.e.,* are not created by a government), and are not listed in proposed Appendix A to part 1, would be due on a same-day basis. To the extent that the future development and use of digital fiat currencies results in a situation where general practice is to settle payments in such currencies on a same-day basis, the Commission would address this in a subsequent rulemaking.

[149] *Id.*

[150] FIA Comment Letter. SIFMA–AMG voiced similar concerns, arguing that the Commission's proposal was overly prescriptive and did not consider legitimate reasons for why firms may have different margin call deadlines.

[151] *Id.*

[152] *Id.*

[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] *Id.*

[157] *Id.*

[158] Such requirement would not apply to margin calls made in light of intraday market movements.

[159] JAC Comment Letter.

[160] *Id.*

would be calculated on a separate account basis, as discussed herein.[161]

The JAC further requested that the Commission clarify that, notwithstanding its proposed one business day margin call requirements, a margin call must be issued to the customer within one business day after the event giving rise to the margin deficiency, even if the call cannot be made until after 11:00 a.m. ET, and even if the business day is not a business day in the customer's jurisdiction. The Commission believes proposed regulation § 1.44(f)(1) addresses this comment by removing the link to the specific time of 11:00 a.m. ET. Rather, if as a result of market moves or position changes on the prior business day, a separate account is undermargined, then the FCM is required to issue a margin call for the separate account for at least the amount necessary for the separate account to meet the initial margin required by the applicable exchanges or clearing organizations (including, as appropriate, the equity component or premium for long or short option positions), and that such call must be met by the applicable separate account customer no later than the close of the Fedwire Funds Service on the same business day regardless of what time the margin call was issued, subject to the proposed limited one or two business-day exception for margin payments posted by separate account customers in certain non-USD/CAD currencies, and other exceptions explicitly provided for in proposed regulation § 1.44(f).

The JAC additionally contended that receipts and disbursements from separate accounts should occur on the same day.[162] The Commission believes this standard will in the main be met where, under the proposed regulation, customers will be required to meet any margin call on the day it is issued, with the limited exceptions discussed in the previous paragraph of one or two business days for payments of margin in certain non-USD/CAD currencies.

With respect to the timing of margin payments in non-USD/CAD currencies, the JAC argued that the Commission should adopt a mechanism to provide timely and efficient changes to payment timelines for meeting a one business day margin call, and that such authority should rest solely with the Commission, rather than with individual DCOs, in order to ensure consistency and avoid confusion where some separately margined accounts may contain positions with one or more DCO.[163]

The proposed procedure outlined herein to remove currencies from or add currencies to proposed Appendix A to part 1 as set forth in proposed regulation § 1.44 is intended to address this comment.[164]

While ICE did not object to the Commission's proposed margin payment timing framework in the First Proposal, ICE recommended that the Commission clarify that the proposed regulation would not affect stricter margin call timeframes established by DCOs for clearing members.

While such clarification may not be required in light of the applicability of proposed regulation § 1.44 to all FCMs regardless of clearing membership and removal of the proposed codification from part 39, for the avoidance of doubt, the Commission states explicitly that the proposed regulation is not intended to affect or prohibit more stringent risk management requirements, including margin call timeframes, that may be established by DCOs with respect to their members. The Commission confirms that an FCM that is a member of a DCO is obligated to comply with such DCO's margin call timeframes, applied in a manner consistent with DCO rules, including those that are more stringent than those addressed in proposed regulation § 1.44.[165] This is consistent with the approach taken with respect to other risk management measures, such as capital requirements.[166]

In its comment, MFA argued that the proposed regulation failed to consider that legitimate reasons exist for firms to impose different margin call deadlines for different clients, and asserted that CFTC Letter No. 19–17 instead recognized such operational complexities by affording firms greater operational flexibility in prescribing margin cutoff times.[167]

As discussed above, in this Second Proposal, the Commission has eliminated time-of-day-specific requirements for when margin calls must be made and met in favor of a general same-day requirement.

In its comment, SIFMA–AMG argued that the Commission should abandon its proposed currency-based three-tiered margin payment timing scheme, arguing that the allowance of grace periods permits for flexibility and serves to address issues posed by operational complexities.[168] For example, SIFMA–AMG further argued that the Commission's proposal did not consider what would happen if different managers for the same client chose different Eurozone countries to follow for purposes of banking holidays, and did not account for parties that may be located in different time zones. The Commission believes it is important from a risk mitigation perspective to preserve a one business day margin call standard, in accordance with industry best practice for prompt fulfillment of margining requirements, and further believes it important from a perspective of regulatory certainty that there be clear lines drawn around the meaning of a one business day margin call. In this Second Proposal, by eliminating prescriptive margin payment timing requirements in favor of a requirement that a margin call be made and met on a same-day basis, with limited extensions for payment of margin in certain currencies, the Commission seeks to implement a standard more flexible and capable of addressing operational complexities than the standard set forth in the First Proposal. With respect to the specific examples raised by SIFMA–AMG, different managers, of different separate accounts, for the same customer (client), would not be precluded from using different countries for purposes of banking holidays, as each such separate account would be separately margined. Nonetheless, if that were to create operational difficulties for the customer, then the customer could resolve those issues with the managers. Additionally, the Commission again invites comment on those currencies for which margin payments should be considered compliant if made by the second business day after a margin call is issued.

The occurrence of a foreign holiday during which banks are closed may also create difficulties in payment of margin in a fiat currency other than USD. Therefore, the Commission proposes regulation § 1.44(f)(4), which states that the relevant deadline for payment of margin in fiat currencies other than USD may be extended by up to one

[161] *See, e.g.,* JAC, Regulatory Alert, #18–02, at 2, June 6, 2018 (discussing undermargined accounts), proposed regulation § 1.44(g)(5).

[162] *Id.*

[163] *Id.*

[164] This procedure is intended to seek the aid of market participants in ''evaluating when a particular foreign currency is eligible for one-day or two-day settlement,'' and thus, on an ongoing basis, matching proposed Appendix A to part 1 to current industry conventions. *Cf.* FIA Comment Letter.

[165] *Cf.* § 39.17(a)(1) (A DCO shall maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance (by its clearing members) with the rules of the DCO.).

[166] *Compare, e.g.,* regulation § 1.17(a)(1) (setting adjusted net capital requirements with an absolute minimum of $1 million, *with* CME Rule 970.A.1 (setting minimum capital requirements with an absolute minimum of $5 million).

[167] MFA Comment Letter.

[168] SIFMA–AMG Comment Letter.

additional business day and still be considered in compliance with the requirements of proposed regulation § 1.44(f) if payment is delayed due to a banking holiday in the jurisdiction of issue of the currency. For payments in EUR, either the separate account customer or the investment manager managing the separate account may designate one country within the Eurozone with which they have the most significant contacts for purposes of meeting margin calls in that separate account, and whose banking holidays shall be referred to for purposes of compliance with the regulation.[169]

Proposed regulation § 1.44(f)(4) is designed to provide FCMs with a level of discretion in how they manage risk by allowing an FCM to *permit* limited delays in margin payments due to non-U.S. banking conventions. Proposed regulation § 1.44(f)(4) would not, however, *require* an FCM to extend the deadline for payments of margin. Here, the Commission is seeking to allow FCMs to exercise risk management judgment in balancing, within limits, the risk management challenges caused by extending the time before a margin call is met with the burdens involved in requiring the client or investment manager to prefund potential margin calls in advance of the holiday or to arrange to pay margin more promptly in USD or another currency not affected by the holiday. The Commission expects that FCM risk management decisions, including the use of any extension permitted under proposed regulation § 1.44(f)(4), will be made in consideration of relevant risk management factors; *e.g.,* a client's risk profile and market conditions, evaluated at the time the risk management decisions are made.[170] The Commission included this proposed requirement in the First Proposal in substantively the same form.

In its comment in response to the First Proposal, the JAC argued that this proposed requirement would create a new recordkeeping requirement for clearing FCMs, and recommended that the Commission clarify that it does not impact the requirements of any other CFTC regulations or SRO rules related to margin calls.[171] As noted above, the Commission believes the proposed regulation addresses this comment in making clear that the requirements in proposed regulation § 1.44(f) for meeting a one business day margin call apply solely for purposes of proposed regulation § 1.44(f).

In CFTC Letter No. 19–17, staff stated that a failure to deposit, maintain, or pay margin or option premium due to administrative errors or operational constraints would not constitute a failure to timely deposit or maintain initial or variation margin that would place a customer out of the ordinary course of business. This provision was intended to prevent a clearing FCM from being excluded from relying on the no-action position as a result of one-off exceptions, such as mis-entered data, a flawed software update, or an unusual and unexpected information technology outage (*e.g.,* an unanticipated outage of the Fedwire Funds Service).

Accordingly, the Commission proposes regulation § 1.44(f)(5), which provides that a failure with respect to a specific separate account to deposit, maintain, or pay margin or option premium that was called pursuant to proposed regulation § 1.44(f)(1), due to unusual administrative error or operational constraints that a separate account customer or investment manager acting diligently and in good faith could not have reasonably foreseen,[172] does not constitute a failure to comply with the requirements of proposed regulation § 1.44(f). For such purposes, an FCM's determination that the failure to deposit, maintain, or pay margin or option premium is due to such administrative error or operational constraints must be based on the FCM's reasonable belief in light of information known to the FCM at the time the FCM learns of the relevant administrative error or operational constraint.[173] The Commission included this proposed requirement in the First Proposal in substantially the same form, with one change.

The current proposal adds the term ''with respect to a specific separate account'' to make clear that ''unusual'' is based on a particular separate account, not the FCM's business with respect to separate accounts as a whole.[174]

In its comment in response to the First Proposal, FIA argued that the Commission's proposed standards for ''unusual'' and ''unforeseen'' are too subjective and would unnecessarily expose FCMs to enforcement actions, noting that unusual or unforeseen events are often outside an FCM's control.[175] FIA did not, however, propose alternative standards.

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[169] With respect to margin payments in EUR, proposed regulation § 1.44(f)(4) is intended to prevent customers or investment managers from leveraging banking holidays in a multiplicity of jurisdictions, to circumvent requirements to pay margin timely.

[170] This expectation is consistent with the statement of the directors of DCR and DSIO in issuing CFTC Letter No. 19–17. CFTC, Statement by the Directors of the Division of Clearing and Risk and the Division of Swap Dealer and Intermediary Oversight Concerning the Treatment of Separate Accounts of the Same Beneficial Owner, Sept. 13, 2019, available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/dcrdsiodirectorstatement091319* (''We fully expect that DCOs and FCMs and their customers will agree that FCMs must retain, at all times, the discretion to determine that the facts and circumstances of a particular shortfall are extraordinary and therefore necessitate accelerating the timeline and relying on the FCM's protocol for liquidation or for accessing funds in the other accounts of the beneficial owner held at the FCM.''). *See also* CFTC Letter No. 20–28 (stating the same).

[171] JAC Comment Letter.

[172] One would expect administrative errors at a well-run money manager to be unusual and unforeseen. For the avoidance of doubt, ''unforeseen'' refers to the particular occurrence of a constraint or error; for example, the fact that some small percentage of errors may be foreseen does not mean that any particular error is foreseen (and ''unusual'' means that such percentage should indeed be small). Moreover, an unusual and unforeseen administrative error or operational constraint that prevents payment might occur at one of a number of points in the payment chain beyond the money manager: Examples include an error or operational failure on the part of the bank that the money manager instructs to send a wire transfer to the FCM, an error or operational failure on the part of the bank (for cash) or custodian (for securities) designated to receive margin on behalf of the FCM, or an error or operational failure on the part of a bank in the middle of a chain between the sending bank and the FCM's bank (particularly in the context of transfers of foreign currency).

[173] The Commission is proposing to establish this reasonableness standard for an FCM's determination that a failure to timely deposit, maintain, or pay margin or option premium on the basis of administrative error or operational constraints. The Commission believes the proposed standard confers significant discretion upon FCMs to assess the disposition of their customers while requiring that FCMs act reasonably and on the basis of current and relevant information, diligently gathered.

[174] Consider an FCM with two dozen separate account customers, with an average of four separate accounts per customer, resulting in 96 separate accounts for that FCM. If each separate account has an exception only once per year, that would result in a total of 96 exceptions, or around two per week, for the FCM. While the Commission does not intend to set a prescriptive definition of ''unusual'' in this context, it may nonetheless be seen that once per year *is* unusual, while twice per week is not.

[175] FIA Comment Letter. FIA observes that ''An FCM should not be subject to administrative sanctions for matters over which the FCM has no control.'' *Id.* The requirements of regulation § 1.44 are consistent with that principle.

The consequence of a separate account customer failing to meet a one-day margin call for reasons that fall outside the scope of an ''unusual administrative error or operational constraints that a separate account customer or investment manager acting diligently and in good faith could not have reasonably foreseen'' is that the customer is outside the ''ordinary course of business,'' and that thus the FCM must cease treating the separate accounts of the separate account customer as accounts of separate entities for purposes of margin distribution under regulation § 1.44(b). That action—which would be required to be taken *by* the FCM—is not an administrative sanction *on* the FCM, which likely would not have direct control over financial and operational conditions at its customer, but rather a measure, designed to protect the FCM and the markets more broadly, that has a negative effect on the customer (rather than the FCM).

Similarly, MFA in its comment argued that FCMs, asset managers, and customers benefit from agreed-upon grace periods for shortfalls resulting from administrative or operational issues unrelated to ability to pay, and argued that use of terms such as ''unusual,'' ''diligently and in good faith'' are subjective.[176] MFA argued that the Commission should remove the condition now encompassed by proposed regulation § 1.44(f)(5).

In its comment, SIFMA–AMG argued that the Commission should remove or re-propose the standard that failure to meet margin obligations ''due to unusual administrative error or operational constraints that a customer or investment manager acting diligently and in good faith could not have reasonably foreseen'' does not constitute a failure to comply with the one business day margin call requirement, on the basis that this proposed provision is ambiguous.

The Commission believes the further criteria for determining the existence of an administrative error or operational constraint provide a clearer definition of the meaning of these terms. The Commission additionally believes that, while FCMs engaged in separate account treatment should not enter agreements that obviate the risk-mitigating purpose of requiring margin calls be met on a one business day basis, proposed regulation § 1.44(f)(5) strikes a reasonable balance in ensuring that FCMs and customers are not forced to cease separate account treatment as a result of unusual and unexpected, one-off errors.

It should also be noted that the provisions of paragraph (f) of proposed regulation § 1.44 are subject to the language that ''the following provisions apply solely for the purposes of this paragraph (f).'' This is separate from, *e.g.,* requirements for margin aging under regulation § 1.17(c)(5)(viii), which requires payment by the end of the business day after the business day on which the margin call is made.

For example, if a margin call for a separate account is made on Tuesday based on events on Monday, and the margin call is to be met in JPY, payment by close of business on Thursday would be timely for purposes of proposed regulation § 1.44(f), because JPY is a currency listed in proposed Appendix A to part 1, and that payment would be considered in compliance with the requirements of paragraph (f) of regulation § 1.44 ''if received by the applicable futures commission merchant no later than the end of the second business day after the day on which the margin call is issued.'' However, payment for that margin call would not be timely for purposes of regulation § 1.17(c)(5)(viii) unless received by close of business on *Wednesday.*

On the other hand, if that margin call is to be made in USD or CAD, and it is not received until Wednesday, and there is no ''unusual administrative error or operational constraints that a customer or investment manager acting diligently and in good faith could not have reasonably foreseen'' (*i.e.,* proposed regulation § 1.44(f)(5) does not apply), then, while payment by Wednesday is timely for purposes of regulation § 1.17(c)(5)(viii), after the close of business on *Tuesday,* the separate account customer would be out of compliance with the one business day margin call called for by proposed regulation § 1.44(f).

Proposed regulation § 1.44(f)(6) states that an FCM would not be in compliance with the requirements of proposed regulation § 1.44(f) if it contractually agrees to provide separate account customers with periods of time to meet margin calls that extend beyond the time periods specified in proposed regulation §§ 1.44(f)(1) through (5),[177] or engages in practices that are designed to circumvent proposed regulation § 1.44(f). The Commission proposes this provision, which was included in the First Proposal in substantively the same form, in order to make clear that it is establishing a maximum period of time in which a margin call must be met for purposes of this regulation, rather than establishing a minimum time that an FCM must allow. Proposed regulation § 1.44(f) would not preclude an FCM from having customer agreements that provide for more stringent margining requirements, or applying more stringent margining requirements in appropriate circumstances. The statement that these ''requirements apply solely for purposes of this paragraph (f)'' means that such requirements are not intended to apply to any other provision; *e.g.,* they are not intended to define when an account is undermargined for purposes of regulation § 1.17. Conversely, the Commission does not propose to prohibit contractual arrangements inconsistent with proposed regulation § 1.44(f). However, the FCM would not be permitted to engage in separate account treatment under such arrangements.

In its comment, CME argued that the proposed regulation could create confusion by incorrectly implying that customers not utilizing separate account treatment may be given contractual terms providing for a period of time longer than one business day to satisfy a margin call or may otherwise restrict the FCM's discretion as to liquidation in contravention of CME Group Exchange rules.[178]

In its comment, the JAC similarly contended that the Commission incorrectly implied that an FCM may contractually agree to a grace or cure period for any customers that are not treated as separate accounts, and recommended that the Commission make clear that if an FCM and customer contract for margin calls to be met on a longer than one business day basis, then the FCM is not making a bona fide attempt to collect margin within one business day after the event giving rise to the margin deficiency.[179]

The Commission notes that it is not proposing this regulation to conform to the rules of a particular DCO, to the extent the DCO may prohibit such grace or cure periods, and further notes that this proposed regulation does not prevent a DCO from maintaining and enforcing rules that apply more stringent risk management standards to their clearing members than are set forth therein.

Proposed regulation § 1.44(f)(7) is an exception to proposed regulation § 1.44(f)(1), dealing with the special case of certain holidays (*i.e.,* Columbus Day and Veterans day) on which some DCMs may be open for trading, but on which banks are closed (and, therefore, payment of margin may be difficult or impracticable). It only applies to an FCM if that FCM trades on such a DCM, and to a separate account if that separate account includes positions traded on such a DCM.

Paragraph (i) deals with margin calls based on undermargined amounts in a separate account resulting from market movements on the business day before the holiday. Such calls may be made on the holiday, but would be due by the close of Fedwire on the next business day after the holiday.[180]

Paragraph (ii) deals with margin calls based on undermargined amounts

[176] MFA Comment Letter.

[177] For example, if an FCM and a customer contract for a grace or cure period that would operate to make margin due and payable later than the deadlines described herein, including a case where the FCM would not have the discretion to liquidate the customer's positions and/or collateral where margin is not paid by such time, such an agreement would be inconsistent with the conditions under which such FCM may engage in separate account treatment.

[178] CME Comment Letter.

[179] JAC Comment Letter.

[180] Additional days due to other provisions of proposed regulation § 1.44(f) would also be applicable.

resulting from market movements on the holiday. If, as a result of such market movements, a separate account is undermargined by an amount greater than the amount it was undermargined as a result of market movements or position changes on the business day before the holiday, the futures commission merchant shall issue a margin call for the separate account for at least the incremental undermargined amount.

The following uses Veterans Day (November 11) as an example, and assumes that no relevant day falls on a weekend. If, as a result of market movements on November 10, a separate account is undermargined by $100, the FCM would issue a margin call of at least $100 and, payment of that $100 would be due by the close of Fedwire on November 12.

If that separate account were to be undermargined by a total of $160 as a result of market movements on November 11, the FCM would issue a margin call for at least the incremental amount ($160 − $100 = $60) on November 12, and that incremental $60 would also be due by the close of Fedwire on November 12. If, instead, the separate account gained $60 on November 11, the original margin call for $100 (issued on November 11) would still need to be met by the close of Fedwire on November 12.

By contrast, if the separate account were not undermargined as a result of market movements on November 10, but then became undermargined by $60 as a result of market movements on November 11, the FCM would issue a margin call in the amount of at least $60 on November 12, and payment would be due by the close of Fedwire on November 12.

In its comment letter, the JAC also opined that if the Commission addresses unscheduled banking holidays or U.S. securities market closures, the Commission should make clear that any such provisions apply only to determining if a margin call is considered one-day and do not govern how such holidays or closures are considered for any other purpose.[181] The Commission believes the proposed regulation addresses this comment in making clear that the requirements in proposed regulation § 1.44(f) for meeting a one business day margin call apply solely for purposes of proposed regulation § 1.44(f).

CME asserted that unscheduled closings of banks or securities markets should be handled on an industry-wide basis, based on facts and circumstances specific to each such situation, and not prescriptively, noting that CME, FIA, SIFMA, and many other exchanges and clearing organizations have worked to establish protocols for these scenarios.[182] Such unscheduled closings (for, *e.g.,* a national day of mourning) would fall under the rubric of an ''unusual . . . operational constraint[ ].''

In its comment letter, SIFMA–AMG recommended the Commission preserve the flexibility of a limited discretionary grace period, stating that the proposed regulation would mean that a ''single 'foot fault' '' with respect to a single manager could cause an FCM to revert to margining on a gross basis.

The Commission believes the requirement of a one business day margin call, as set forth in the no-action position and further expanded on in the Second Proposal, is a core component of mitigating the risk that separate account treatment will result in the under-margining of one or more separate accounts. The effect of a one business day margin call is to limit the time during which a customer account (or, here, a customer's separate account) is undermargined, and thus to limit the risk to the FCM (and the FCM's omnibus customer account for futures, Cleared Swaps, or foreign futures or foreign options). One business day is industry best practice. The Commission notes that a ''single,'' one-off error with respect to a single manager would also not under the proposed regulation result in a reversion to margining on a customer basis if such error meets the criteria for an unusual and unforeseen administrative error or operational constraint discussed above.

Lastly, the Commission proposes regulation § 1.44(f)(8) to set forth a procedure to adjust the scope of currencies in proposed Appendix A to part 1. In proposing regulation § 1.44(f)(8), the Commission seeks to ensure a more flexible process whereby members of the public, or the Commission itself, may initiate a process to expand or narrow proposed Appendix A to part 1 as may be required from time to time, subject to public notice and comment. Proposed regulation § 1.44(f)(8) provides that any person may submit to the Commission any currency that such person proposes to add to or remove from proposed Appendix A to part 1. The submission must include a statement that margin payments in the relevant currency cannot, in the case of a proposed addition, or can, in the case of a proposed removal, practicably be received by the futures commission merchant issuing a margin call no later than the end of the first business day after the day on which the margin call is issued. The submitter would need to support such assertion with documentation or other relevant supporting information, as well as any additional information that the Commission requests.[183] The Commission would be required to review the submission and determine whether to propose to add the relevant currency to, or remove it from, proposed Appendix A to part 1. The Commission would also be required to issue such determination through notice-and-comment rulemaking, with a comment period of no less than thirty days. Proposed regulation § 1.44(f)(8) also provides that the Commission may propose to issue such a determination of its own accord, without prompting by a submission from a member of the public. As with a public submission, a Commission determination on its own accord would be subject to notice and comment rulemaking, with a public comment period of no less than thirty days.

Request for Comment

Question 6: The Commission requests comment regarding whether, in light of changes made in this Second Proposal relative to the First Proposal, the regulatory framework set forth in proposed regulation § 1.44(f) appropriately balances practicability and burden with risk management. If not, what alternative approach should be taken? How would such an alternative approach better balance those considerations? In particular, the Commission requests comment on whether the proposed standard of timeliness for a one business day margin call set forth in proposed regulation § 1.44(f) presents practicability challenges and, if so, what those challenges are, and how the proposed standard of timeliness could be improved.

Question 7: Proposed regulation § 1.44(f)(4) provides that the relevant deadline for payment of margin in fiat currencies other than USD may be extended by up to one additional business day and still be considered in compliance with the requirements of proposed regulation § 1.44(f) if payment is delayed due to a banking holiday in the jurisdiction of issue of the currency. Proposed regulation § 1.44(f)(4) further provides that, for payments in EUR, either the separate account customer or

[181] JAC Comment Letter.

[182] *Id.*

[183] Submitters may request confidential treatment for parts of its submission in accordance with Commission regulation § 145.9(d).

the investment manager managing the separate account may designate one country within the Eurozone that they have the most significant contacts with for purposes of meeting margin calls in that separate account, whose banking holidays shall be referred to for such purpose. As noted above, this provision is intended to prevent customers or investment managers from leveraging banking holidays in a multiplicity of jurisdictions to circumvent requirements to pay margin promptly. Separately from Question 6 above, the Commission requests comment specifically in relation to proposed regulation § 1.44(f)(4), with respect to:

(1) Whether commenters believe it will be impracticable to comply with proposed regulation § 1.44(f)(4), as that section pertains to payment of margin in EUR. For example, if a customer selects Eurozone Country A as the jurisdiction that is most significant to their operations for purposes of meeting margin calls in separate accounts, but also uses a bank in Eurozone Country B to meet margin payments in EUR, would a banking holiday in Country B (but not Country A) make it impracticable for the customer to pay margin in compliance with proposed regulation § 1.44(f)(3)? Commenters are requested to provide examples of operational or other challenges that would result in such impracticability.

(2) To the extent commenters have such practicability concerns, how, in the alternative, should the Commission seek to achieve its goal, discussed above, of preventing evasion of the one business day margin call standard, in light of differing banking holidays within the national jurisdictions that comprise the Eurozone?

J. Proposed Regulation § 1.44(g)

Proposed regulation § 1.44(g) contains requirements related to calculations for capital, risk management, and segregation of customer funds. These provisions are substantially similar to the corresponding no-action conditions in CFTC Letter No. 19–17, and to corresponding conditions included in the First Proposal, except that they have been reorganized and subject to minor changes to account for their proposed inclusion in part 1 of the Commission's regulations as well as the proposed introduction of new defined terms. Many of these provisions are intended to ensure that an FCM treats each separate account as a distinct account from all other accounts of a separate account customer for purposes of the FCM computing its regulatory capital and segregation of customer funds. The proposed provisions are also intended to ensure that an FCM treats separate accounts in a consistent manner for purposes of risk management.

As FIA noted in its June 26, 2019 letter, customer agreements that provide for separate account treatment generally require that a separate account be margined separately from any other account maintained for the customer with the FCM, and assets held in one separate account should not ordinarily be used to offset, or (absent default) meet, any obligations of another separate account, including obligations that it or another investment manager may have incurred on behalf of a different account of the same customer.[184] In that letter, preceding issuance of CFTC Letter No. 19–17, FIA observed that these restrictions serve to assure the customer, or the asset manager responsible for a particular account, that the account will not be subject to unanticipated interference that may exacerbate stress on a customer's aggregate exposure to the FCM.[185] Additionally, FIA noted that where an FCM treats separate accounts as separate customers for risk management purposes, the FCM may manage risk more conservatively against the customer under the assumption that the customer has fewer assets than it may in fact have.[186]

Accordingly, proposed regulation § 1.44(g) would, if adopted, apply to all FCMs certain conditions in CFTC Letter No. 19–17. These conditions are designed to provide for consistent treatment of separate accounts. Proposed regulation § 1.44(g) requires a separate account of a customer to be treated separately from other separate accounts of the same customer for purposes of certain existing computational and recordkeeping requirements, which would otherwise be met by treating accounts of the same customer on a combined basis. Because accounts subject to proposed regulation § 1.44 would be risk-managed on a separate basis, the Commission believes it is appropriate for the proposed regulation to provide that FCMs apply these risk-mitigating computational and recordkeeping requirements on a separate account basis. The effect of the requirements in these paragraphs is to augment the FCM's existing obligations under various provisions of regulation § 1.17.

Proposed regulation § 1.44(g)(1) provides that an FCM's internal risk management policies and procedures shall provide for stress testing as set forth in regulation § 1.73, and credit limits for separate account customers. Proposed regulation § 1.44(g)(1) further provides that such stress testing must be performed, and the credit limits must be applied, both on an individual separate account and on a combined account basis. By conducting stress testing on both an individual separate account and on a combined account basis, an FCM can determine the potential for significant loss in the event of extreme market conditions, and the ability of traders and FCMs to absorb those losses, with respect to each individual account of a customer, as well as with respect to all of the customer's accounts. Additionally, by applying credit limits on both an individual separate account basis (to address issues that may be specific to the particular strategy governing the separate account) and on a combined account basis (to address issues that may be applicable to the customer's overall portfolio at the FCM), an FCM can be in a better position to manage the financial risks they incur as a result of carrying positions both for a customer's separate account and for all of the customer's accounts. By better managing the financial risks posed by customers and understanding the extent of customers' risk exposures, FCMs can better mitigate the risk that customers do not maintain sufficient funds to meet applicable initial and maintenance margin requirements, and anticipate and mitigate the risk of the occurrence of certain of the events detailed in proposed regulation § 1.44(e).

Proposed regulation § 1.44(g)(2) provides that an FCM shall calculate the margin requirement for each separate account of a separate account customer independently from such margin requirement for all other separate accounts of the same customer with no offsets or spreads recognized across the separate accounts. An FCM would be required to treat each separate account of a customer independently from all other separate accounts of the same customer for purposes of computing capital charges for undermargined customer accounts in determining its adjusted net capital under regulation § 1.17.

Proposed regulation § 1.44(g)(3) provides that an FCM shall, in computing its adjusted net capital for purposes of regulation § 1.17, record each separate account of a separate account customer in the books and records of the FCM as a distinct account of a customer, including recording each separate account with a net debit balance or a deficit as a receivable from the separate account customer, with no offsets between the other separate

[184] First FIA Letter.

[185] *Id.*

[186] *Id.*

accounts of the same separate account customer, with respect to separate account customers, comply with certain additional requirements in computing its adjusted net capital for purposes of regulation § 1.17.

Regulations §§ 1.20, 22.2, and 30.7 currently require an FCM to maintain a sufficient amount of customer funds in segregated accounts to meet its total obligations to all futures customers, Cleared Swaps Customers, and 30.7 customers, respectively.[187] In order to ensure that the FCM holds sufficient funds in segregation to satisfy the aggregate account balances of all customers with positive net liquidating balances, the FCM is prohibited from netting the account balances of customers with deficit or debit ledger balances against the account balances of customers with credit balances.[188] Each FCM is also required to prepare and submit to the Commission, and to FCM's DSRO, a daily statement demonstrating compliance with its segregation obligations.[189]

Proposed regulation § 1.44(g)(4) provides that an FCM shall, in calculating the amount of its own funds it is required to maintain in segregated accounts to cover deficits or debit ledger balances pursuant to regulations §§ 1.20(i), 22.2(f), or 30.7(f)(2) in any futures customer accounts, Cleared Swaps Customer Accounts, or 30.7 accounts, respectively, include any deficits or debit ledger balances of any separate account as if the accounts are accounts of separate entities. The purpose of proposed regulation § 1.44(g)(4) is to ensure that an FCM that elects to permit separate account customers treats separate accounts as if the accounts are accounts of separate entities for purposes of computing the amount of funds the FCM is required to hold in segregation for futures customers, Cleared Swaps Customers, and 30.7 customers. Specifically, proposed regulation § 1.44(g) would provide that an FCM may not offset a deficit or debit ledger balance in the separate account of a separate account customer by any credit balance in any other separate accounts of the separate account customer carried by the FCM. Proposed regulation § 1.44(g) would impose the same obligations on separate accounts that are currently imposed by regulations §§ 1.20, 22.2, and 30.7 on customer accounts that are not separate accounts. Proposed regulation § 1.44(g) is also consistent with CFTC Letter No. 19–17.[190]

Regulations §§ 1.22, 22.2, and 30.7 currently prohibit an FCM from using, or permitting the use of, the funds of one futures customer, Cleared Swaps Customer, or 30.7 customer, respectively, to purchase, margin or settle the positions of, or to secure or extend the credit of, any person other than such customer.[191] To ensure compliance with this prohibition, each FCM is required to compute, as of the close of the previous business day, the total undermargined amount of its customers' accounts and to maintain a sufficient amount of the FCMs' own funds (*i.e.,* residual interest) in the applicable customer segregated accounts to cover the undermargined amounts.[192]

The Commission is proposing regulation § 1.44(g)(5) to provide that, for purposes of its residual interest and LSOC compliance calculations, as applicable under regulations §§ 1.22(c), 22.2(f)(6), and 30.7(f)(1)(ii), the FCM shall treat the separate accounts of a separate account customer as if the accounts were accounts of separate entities and include the undermargined amount of each separate account, and cover such deficiency with its own funds. The proposed amendments would result in an FCM treating each separate account in a manner comparable with the treatment currently provided to customer accounts that are not separate accounts. The proposal is also consistent with CFTC Letter No. 19–17.[193]

Commission regulation § 1.11 requires an FCM that accepts customer funds to margin futures, Cleared Swaps, or foreign futures and foreign options to implement a risk management program designed to monitor and manage the risks associated with the activities of the FCM.[194] The risk management program is required to address, among other risks, segregation risk, and further requires an FCM to establish a targeted amount of its own funds, or residual interest, that the firm will hold in segregated accounts for futures customers, Cleared Swaps Customers, and 30.7 customers to reasonably ensure that the FCM remains in compliance with its obligation to hold, at all times, a sufficient level of funds in segregation to cover its full obligation to its customers.[195] Regulation 1.23(c) further requires an FCM to establish a targeted residual interest amount that is held in segregation to reasonably ensure that the FCM remains in compliance, at all times, with its customer funds segregation requirements.[196]

The Commission is proposing to adopt regulation § 1.44(g)(6) to provide that, in determining its residual interest target for purposes of regulations §§ 1.11(e)(3)(i)(D) and 1.23(c), the FCM must treat separate accounts of separate account customers as accounts of separate entities. In this regard, an FCM is required to consider the potential impact to segregated funds and to the FCM's targeted residual interest resulting from one or more separate accounts of a separate account customer that are undermargined, or that contain deficits or debit ledger balances, without taking into consideration the funds in excess of the margin requirements maintained in other separate accounts of the separate account customer.

Currently, Commission regulations require an FCM to maintain its own capital, or residual interest, in customer segregated accounts in an amount equal to or greater than its customers' aggregate undermargined accounts.[197] Additionally, each day, an FCM is required to perform a segregated calculation to verify its compliance with segregation requirements. The FCM must file a daily electronic report showing its segregation calculation with its DSRO, and the DSRO must be provided with electronic access to the FCM's bank accounts to verify that the funds are maintained. The FCM must also assure its DSRO that when it meets a margin call for customer positions, it never uses value provided by one customer to meet another customer's obligation.[198] These requirements are intended to prevent FCMs from being induced to cover one customer's margin shortfall with another customer's excess margin, and allow DSROs to verify that FCMs are not in fact doing so. Proposed

[187] 17 CFR 1.20(a), 22.2(f)(2), and 30.7(a).

[188] 17 CFR 1.20(i)(4), 22.2(f)(4), and 30.7(f)(2)(iv) for futures customer accounts, Cleared Swaps Customer Accounts, and 30.7 accounts, respectively.

[189] *See* 17 CFR 1.32(d), 22.2(g)(3), and 30.7(l)(3).

[190] CFTC Letter No. 19–17 provides that an ''FCM shall use its own funds to cover the debit/deficit of each separate account.'' CFTC Letter No. 19–17.

[191] 17 CFR 1.22(a), 22.2(d), and 30.7(f)(1)(i).

[192] An FCM is required to maintain a sufficient amount of its own funds in segregation to cover the FCM's customers' undermargined amounts by the residual interest deadline. The residual interest deadline for futures customers and 30.7 customers is 6:00 p.m. Eastern Time on the next business day. 17 CFR 1.22(c) & 30.7(f). The residual interest deadline for Cleared Swaps Customers is the time of settlement on the next business day of the applicable swaps clearing organization. 17 CFR 22.2(f)(6).

[193] CFTC Letter No. 19–17 provides that an ''FCM shall include the margin deficiency of each separate account, and cover with its own funds as applicable, for purposes of its [r]esidual [i]nterest and LSOC compliance calculations. CFTC Letter No. 19–17 (Condition 10).

[194] 17 CFR 1.11.

[195] 17 CFR 1.11(e)(3)(i)(D).

[196] 17 CFR 1.23(c).

[197] *See, e.g.,* 17 CFR 1.22(c)(3); 17 CFR 22.2(f)(6)(iii)(A).

[198] *See, e.g.,* 17 CFR 22.2(g).

regulation § 1.44(g)(6) is designed to ensure that margin deficiencies are calculated accurately for accounts receiving separate treatment, and that such deficiencies are covered consistent with existing Commission regulations. Proposed regulation § 1.44(g)(6) is also consistent with the conditions to the no-action position in CFTC Letter No. 19–17.[199]

With respect to the provisions in the First Proposal corresponding to the provisions in proposed regulation § 1.44(g), the Commission received a comment from FIA. With respect to proposed regulation § 1.44(g)(1), FIA noted that FCMs are already required under regulation § 1.73 to provide for stress testing and credit limits for all customers, including separate account customers.[200] FIA asserted that stress testing for separate accounts would provide no additional risk management benefits when they do not account for all of a customer's underlying assets.[201]

Regulation § 1.73 does not presently provide for stress testing on a separate account basis, and does not apply to non-clearing FCMs. As discussed further below, the Commission believes that it is appropriate to apply these risk management requirements, including requirements for stress testing, to non-clearing FCMs with respect to the separate accounts of their separate account customers, and that doing so on such basis could allow FCMs to detect potential deficiencies, the correction of which would prevent the occurrence of conditions that would necessitate a cessation of separate account treatment. The separate requirement to additionally conduct stress testing on a combined account basis is intended to serve as a backstop so that an FCM can have a view of all of a customer's actual holdings. If the customer does default, the FCM will have to liquidate all of the customer's holdings. Understanding the extent to which the positions within separate accounts may be additive (and perhaps create more concentrated positions when considered together) is also important to an FCM's ability to manage risk.

K. Proposed Regulation § 1.44(h)

Proposed regulation § 1.44(h) contains requirements related to information and disclosures. As with the provisions in proposed regulation § 1.44(g), these provisions are substantially similar to their corresponding no-action conditions in CFTC Letter No. 19–17, and to corresponding conditions included in the First Proposal, except that they have been reorganized and subject to minor changes to account for their proposed inclusion in part 1 as well as the proposed introduction of new defined terms.

Proposed regulation § 1.44(h)(1) provides that an FCM shall obtain from each separate account customer or, as applicable, the manager of a separate account, information sufficient for the FCM to (i) assess the value of the assets dedicated to such separate account; and (ii) identify the direct or indirect parent company of the separate account customer, as applicable, if such customer has a direct or indirect parent company.[202] Proposed regulation § 1.44(h)(1) is intended to ensure that FCMs have visibility with respect to customers' financial resources appropriate to ensure that a customer's separate account is adequately margined, and to identify when a customer's financial circumstances would necessitate the cessation of separate account treatment. Proposed regulation § 1.44(h)(1)(i) contemplates that, in certain instances, an investment manager may manage one or more accounts under power of attorney on a customer's behalf; in such cases, an FCM may obtain the requisite financial information from the investment manager. Proposed regulation § 1.44(h)(1)(ii) is intended to ensure that FCMs have sufficient information to identify the direct or indirect parent company of a customer so that they may identify when a parent company of a customer has become insolvent, for purposes of proposed regulation § 1.44(e)(1)(iv).

In its comment in response to the First Proposal, CME asserted that if the parent of an FCM has multiple relationships with a customer (*e.g.,* prime brokerage or lending), it should be sufficient that the FCM's parent has this information and can provide it to the Commission upon request. The Commission believes that if an asset manager is managing a specified set of assets, then it is relevant for the FCM to know the size of that set of assets. Additionally, the requirement to gather information sufficient to identify the direct or indirect parent of the customer is intended to ensure that the FCM understands who the parent is so that it can be aware if the parent becomes insolvent or otherwise experiences a non-ordinary course of business event. That an FCM's parent may hold such information does not necessarily mean that the FCM has such information readily available—a goal this proposed provision is designed to accomplish.

In its comment, FIA argued that this provision was unnecessary as the proposed requirement is already consistent with proper risk management or otherwise required by applicable law.[203] FIA further argued that this provision may imply that an FCM has obligations with regard to separate account customers that do not exist for other customers. The Commission notes that to the extent 31 CFR 1010.230, which pertains to the identification of beneficial owners, does not contain specific requirements related to the identification of direct or indirect parent companies, or the value of assets dedicated to separate accounts, proposed regulation § 1.44(h)(1) is designed to capture such information; additionally, while proposed regulation § 1.44 makes clear that its requirements are applicable to FCMs that provide separate account treatment for customers, it does not state that it is intended to supersede any other requirements related to ascertaining the identity of beneficial owners (*i.e.,* customers). FIA additionally opposed any further amendment to this provision that would require an FCM to obtain any specific information or documentation, or prescribe the schedule by which an FCM must update such information; the Commission in this Second Proposal has determined not to propose such further requirements and expects that FCMs will obtain the requisite information in a time and manner consistent with the FCM's existing risk management policies.

In its comment, the JAC asserted that further clarity is needed on how clearing FCMs should determine the value of assets dedicated to separate accounts, and that such information should be updated at least annually and more often as facts and circumstances warrant. The Commission recognizes that there may exist significant diversity among separate account customers in the nature of customer positions, underlying assets, and frequency with which such assets change in terms of size and composition. The Commission does not wish to set a prescriptive, one-size-fits-all standard in the method and frequency of the valuation contemplated by proposed regulation § 1.44(h)(1), and

[199] CFTC Letter No. 19–17 provides that the ''FCM shall factor into its residual interest target customer receivables as computed on a separate account basis.'' CFTC Letter No. 19–17 (Condition 9).

[200] FIA Comment Letter.

[201] *Id.*

[202] The Commission understands that, in certain cases, such as when a customer is a fund, the customer may not have a parent company. In such cases, the requirement to obtain information sufficient to identify the direct or indirect parent company would not apply.

[203] FIA Comment Letter (citing 31 CFR 1010.230).

believes an FCM should be able to value assets in a manner consistent with its otherwise appropriate risk management policies.

Proposed regulation § 1.44(h)(2) provides that, where a separate account customer has appointed a third-party as the primary contact to the FCM, the FCM must obtain and maintain current contact information of an authorized representative at the customer, and take reasonable steps to verify that such contact information is and remains accurate, and that the person is in fact an authorized representative of the customer. In many cases, an investment manager acts under a power of attorney on behalf of a customer, and the FCM has little direct contact with the customer. Proposed regulation § 1.44(h)(2) is designed to ensure that FCMs have a reliable means of contacting separate account customers directly if the investment manager fails to ensure prompt payment on behalf of the customer. Under the First Proposal, a DCO would have needed to require that a clearing FCM engaged in separate account treatment review and, if necessary, update the relevant contact information no less than annually. The Commission has determined to omit the requirement of an annual review from this Second Proposal for the avoidance of confusion with respect to the requirement to maintain current contact information for authorized representatives as, in the Commission's view, reasonable steps to verify that contact information remains accurate may, depending on the circumstances, necessitate review and update of such information on a basis more or less frequent than annually.

In its comment in response to the First Proposal, FIA opposed required annual updates of contact information for customer representatives, asserting that FCMs are in regular contact with investment managers and will have current contact information for them. While FCMs may communicate regularly with investment managers, and generally have current contact information for them, the Commission notes that its intent is to enable the FCM to have contact information for the customer, in addition to having contact information for the investment manager, in order to enable the FCM to contact the customer directly if the FCM has problems with the account manager. As noted above, in this Second Proposal, the Commission has omitted the annual update requirement, but will require that customer representative contact information be kept current. The Commission considers it prudent risk management practice that the FCM maintain a line of contact to the customer of a separate account, and this is consistent with a condition of the no-action position.

In its comment, the JAC argued that the Commission should require a corporate resolution or similar document authorizing a representative at a customer to represent the customer if the customer is not an individual. The JAC opined that maintaining current contact information for authorized representatives of customers with associated corporate resolutions or similar documentation should already be part of a clearing FCM's policies and procedures (noting that most such FCMs likely already review such information on at least an annual basis), and noted that the additional cost of adding such a requirement would likely be *de minimis*. The Commission notes that the proposed regulation already would require FCMs to take reasonable steps to verify that the authorized representative of a customer is in fact an authorized representative of the customer. While the proposed regulation would not preclude an FCM from requiring from a customer a corporate resolution authorizing a representative to represent a customer in order for the FCM to comply with this requirement, the Commission wishes to preserve a degree of flexibility in how FCMs may choose to verify the identity and authorization of customer representatives, and is not at this time prescribing specific means of verifying such information.

Proposed regulation § 1.44 will not affect the Commission's bankruptcy rules under part 190 of its regulations or any rights of a customer or FCM in bankruptcy thereunder. In the event that an FCM electing separate account treatment experiences a bankruptcy, the accounts of a customer in each account class will be consolidated, and accounts of the same customer treated separately for purposes of proposed regulation § 1.44 will not be treated separately in bankruptcy. To make this limitation clear to customers and FCMs, the Commission proposes regulation § 1.44(h)(3), which provides that an FCM must provide each separate account customer with a disclosure that, pursuant to part 190 of the Commission's regulations, all separate accounts of the customer in each account class will be combined in the event of the FCM's bankruptcy. The disclosure statement required by proposed regulation § 1.44(h)(3) must be delivered directly to the customer via electronic means, in writing or in such other manner as the FCM customarily delivers disclosures pursuant to applicable Commission regulations, and as permissible under the FCM's customer documentation. Furthermore, the FCM must maintain documentation demonstrating that the disclosure statement required by proposed regulation § 1.44(h)(3) was delivered directly to the customer. Additionally, the FCM must include the disclosure statement required by proposed regulation § 1.44(h)(3) on its website or within its Disclosure Document required by Commission regulation § 1.55(i).

The Bankruptcy Reform Act of 1978[204] enacted subchapter IV of chapter 7 of the Bankruptcy Code, title 11 of the U.S. Code, to add certain provisions designed to afford enhanced protections to commodity customer property and protect markets from the reversal of certain transfers of money or other property, in recognition of the complexity of the commodity business.[205] The Commission enacted part 190 of its regulations, 17 CFR part 190, to implement subchapter IV. Under part 190, all separate accounts of a customer in an account class will be combined in the event of an FCM's bankruptcy.[206] The Commission proposes to adopt proposed regulation § 1.44(h)(3) so that customers receive full and fair disclosure as to the treatment of their accounts in an FCM bankruptcy.

Proposed regulation § 1.44(h)(4) provides that an FCM that has made an election pursuant to proposed regulation § 1.44(d) shall disclose in the Disclosure Document required by regulation § 1.55(i) that it permits the separate treatment of accounts for the same customer under the terms and conditions of proposed regulation § 1.44. A similar provision was included in the First Proposal as proposed regulation § 39.13(j)(13). Regulation § 1.55 was adopted to advise new customers of the substantial risk of loss inherent in trading commodity futures.[207] The Commission amended regulation § 1.55 in 2013 to, among other things, add new paragraph (i) requiring FCMs to disclose to customers

[204] Public Law 95–598, 92 Stat. 2549.

[205] Bankruptcy, 46 FR 57535, 57535–36 (Nov. 24, 1981).

[206] 17 CFR 190.08(b)(2)(i) and (xii) (Aggregate the credit and debit equity balances of all accounts of the same class held by a customer in the same capacity. Except as otherwise provided in this paragraph (b)(2), all accounts that are deemed to be held by a person in its individual capacity shall be deemed to be held in the same capacity. Except as otherwise provided in this section, an account maintained with a debtor by an agent or nominee for a principal or a beneficial owner shall be deemed to be an account held in the individual capacity of such principal or beneficial owner.).

[207] Adoption of Customer Protection Rules, 43 FR 31886, 31888 (July 24, 1978).

all information about the FCM, including its business, operations, risk profile, and affiliates, that would be material to the customer's decision to entrust funds to and otherwise do business with the FCM and that is otherwise necessary for full and fair disclosure.[208] Such disclosures include material information regarding specific topics identified in regulation § 1.55(k), which include a basic overview of customer funds segregation, as well as current risk practices, controls, and procedures.[209] These disclosures are designed to ''enable customers to make informed judgments regarding the appropriateness of selecting an FCM'' and enhance the diligence that a customer can conduct prior to opening an account and on an ongoing basis.[210] The Commission believes that the application of separate account treatment for some customers of an FCM, is ''material to the . . . decision to entrust . . . funds to and otherwise do business with the [FCM]'' with respect to the customers of such FCM generally because, in the event that separate account treatment for some customers were to contribute to a loss that exceeds the FCM's ability to cover, that loss might affect the segregated funds of all of the FCM's customers in one or more account classes.[211] Accordingly, the Commission proposes regulation § 1.44(h)(4) to ensure that customers are apprised of a matter that is relevant to the FCM's risk management policies.

In its comment in response to the First Proposal, the JAC contended that the Disclosure Document should be provided directly to the authorized representative of a customer to ensure the customer has a complete understanding of how its accounts will be combined in FCM bankruptcy. The JAC also requested that the Commission clarify what is meant by ''delivered separately'' to the underlying customer. The Commission notes that in this Second Proposal, ''delivered separately'' has been changed to ''delivered directly,'' to clarify that the Disclosure Document must be provided specifically to the customer.

The JAC also contended that the regulation § 1.55(i) disclosure should be expanded ''not only to indicate that the FCM permits separate account treatment, but also to include a thorough discussion of additional risks to other customers as highlighted by the Commission in the Preamble discussion.'' [212] In the Commission's view, the proposed conditions for separate account treatment are intended to achieve the same risk management objectives that would otherwise be achieved through application of the Margin Adequacy Requirement, and an FCM that complies with those conditions would not subject customers other than separate account customers to substantial additional or different risks. Nonetheless, while such risks may not be substantial, they cannot be said to be nonexistent, and so the Commission is adding in proposed regulation § 1.44(h)(4) to the disclosure proposed in the First Proposal the language that ''in the event that separate account treatment for some customers were to contribute to a loss that exceeds the FCM's ability to cover, that loss may affect the segregated funds of all of the FCM's customers in one or more account classes.''

Additionally, the JAC recommended that the Commission address how separate account treatment may impact a pro rata distribution in the event of a clearing FCM bankruptcy. For the avoidance of doubt, the Commission confirms that, if an FCM disburses funds to a customer receiving separate treatment which would not otherwise have been available if the accounts were treated on a gross basis, the FCM subsequently declares bankruptcy and, as a result of the separate account disbursement, the customer has a smaller amount of funds on deposit when its separate accounts are combined in bankruptcy, then the customer may share in any shortfall in customer funds at the FCM to a lesser extent than would a customer not subject to separate account treatment. This result is an inherent risk of separate account treatment, but is not unique; any customer that reduces their amount of margin on deposit at an FCM shortly before the FCM goes into bankruptcy (either by reducing excess margin, or reducing the risk of their positions and withdrawing the resulting margin excess) would similarly benefit.

Additionally, proposed regulation § 1.44(h)(4)(i) provides that an FCM that applies separate account treatment pursuant to proposed regulation § 1.44 must apply such treatment in a consistent manner over time, and that if the election pursuant to proposed regulation § 1.44(d) for a separate account customer is revoked, such election may not be reinstated during the 30 days following such revocation. The Commission proposes this 30-day period to further ensure that FCMs will conduct a diligent and thorough review to confirm that the circumstances leading to cessation of separate account treatment have been cured, and to prevent the possibility that, as discussed below, an FCM could toggle its separate account treatment election for purposes other than serving customers' bona fide commercial purposes. Proposed regulation § 1.44(h)(i) is intended to ensure that FCMs employ separate account treatment in a way that is consistent with the customer protection and FCM risk management provisions of the CEA and Commission regulations. The Commission recognizes that, while bona fide business or risk management purposes may at times warrant application or cessation of separate account treatment, FCMs should not apply or cease separate account treatment for reasons, or in a manner, that would contravene the customer protection and risk mitigation purposes of the CEA and Commission regulations. For instance, an FCM should not switch back and forth between separate and combined treatment for customer accounts in order to achieve more preferable margining outcomes or offset margin shortfalls in particular accounts. The period of 30 days was chosen to balance this goal with a recognition that, after a sufficient period of time, the relevant circumstances for a particular customer may change for reasons other than strategic switching. The Commission recognizes that there are a wide variety of circumstances that may indicate inconsistent application of separate account treatment.

L. Proposed Appendix A to Part 1

As discussed above, the Commission proposes Appendix A to part 1 to set forth those currencies for which payment of margin shall be considered in compliance with the one business day margin call requirements of proposed regulation § 1.44(f) if received no later than the end of the second business day after the day on which the margin call is issued. As discussed above, the procedures for adding currencies to or removing currencies from proposed Appendix A to part 1 would be set forth in proposed regulation § 1.44(f)(8).

In the First Proposal, the Commission proposed that margin paid in JPY would receive two-business day treatment and requested that commenters indicate which, if any, additional currencies would require similar treatment. In its comment, FIA stated, based on its members' knowledge and experience, considering time zone limitations and

[208] 17 CFR 1.55(i).

[209] 17 CFR 1.55(k)(8), (11).

[210] Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 FR 68506, 68564 (Nov. 14, 2013).

[211] *See* 17 CFR 1.55(i).

[212] JAC Comment Letter.

industry settlement conventions, that the following currencies may also require such treatment: Australian dollar (AUD), Chinese renminbi (CNY), Hong Kong dollar (HKD), Hungarian forint (HUF), Israeli new shekel (ILS), New Zealand dollar (NZD), Singapore dollar (SGD), South African rand (ZAR), and Turkish lira (TRY).[213] The Commission is persuaded by this analysis, and understands that the list of currencies in proposed Appendix A to part 1 is consistent with current industry settlement conventions, based on the Commission staff's informational discussions with industry professionals knowledgeable regarding such conventions. The Commission proposes that the initial currencies under proposed Appendix A to part 1 should be AUD, HKD, HUF, ILS, NZD, SGD, ZAR, TRY, and CNY. The Commission would welcome further comment indicating industry settlement conventions for other currencies.

M. Proposed Amendments to Regulation § 1.58

Regulation § 1.58(a) currently provides that each FCM that carries a commodity futures or commodity option position for another FCM or a foreign broker on an omnibus basis must collect, and each FCM and foreign broker whose account is so carried, must deposit initial and maintenance margin on positions reportable under Commission regulation § 17.04 at a level of at least that established for customer accounts by the rules of the relevant contract market. Regulation § 1.58(a) is designed to ensure that where a clearing FCM (*i.e.,* a carrying FCM) carries a customer omnibus account for a non-clearing FCM (*i.e.,* a depositing FCM), the risk posed by the customers of the depositing FCM continues to be appropriately mitigated through margining of those positions (*i.e.,* calculation of initial and maintenance margins) on a gross basis at the depositing FCM. This is analogous to the margining of positions of a clearing FCM on a gross basis at the DCO.[214]

In proposing regulation § 1.58(a), the ''Commission view[ed] with great concern the fact that [a significant] amount of customer funds [was] being held by firms [*i.e.,* non-clearing FCMs] that, in comparison to clearing FCMs, generally have less capital and are less equipped to handle the volatility of the commodity markets, a concern which was highlighted by the . . . bankruptcies [of three FCMs] which occurred during the last half of 1980.'' [215] In light of the segregation requirements at the time—which did not yet apply to foreign futures and foreign options, and also did not apply to cleared swaps (a category that did not then exist), these requirements were designed only to apply to futures and options. The requirement was therefore tied to position reporting under regulation § 17.04, a reporting requirement that is limited to futures and options.

By 2011, industry practice had developed such that ''[u]nder current industry practice, omnibus accounts report gross positions to their clearing members and clearing members collect margins on a gross basis for positions held in omnibus accounts.'' [216] The Commission thus required DCOs to require that clearing members post margin to DCOs on a gross basis for both domestic futures and cleared swaps.[217] The Commission stated, as its rationale, that it

> continues to believe, as stated in the notice of proposed rulemaking, that gross margining of customer accounts will: (a) More appropriately address the risks posed to a DCO by its clearing members' customers than net margining; (b) will increase the financial resources available to a DCO in the event of a customer default; and (c) with respect to cleared swaps, will support the requirement in § 39.13(g)(2)(iii) that a DCO must margin each swap portfolio at a minimum 99 percent confidence level.[218]

The Commission also noted that, ''under certain circumstances gross margining may also increase the portability of customer positions in an FCM insolvency. That is, a gross margining requirement would increase the likelihood that there will be sufficient collateral on deposit in support of a customer position to enable the DCO to transfer it to a solvent FCM.'' [219]

At the time, with its focus on implementing rules for DCOs, the Commission did not amend regulation § 1.58 explicitly to require gross margining for omnibus accounts cleared by a non-clearing FCM through a clearing FCM. However, reviewing the matter presently, the Commission is of the view that the reasons for requiring clearing FCMs to post margin at a DCO on a gross basis apply, *mutatis mutandis,* to support requiring gross margining for omnibus customer accounts of non-clearing FCMs for Cleared Swaps in addition to domestic futures.[220]

Accordingly, the Commission is proposing to amend regulations § 1.58(a) and (b) to require, in the case of (a), addressing gross collection of margin generally, that each futures commission merchant which carries a futures, options, or Cleared Swaps position for another futures commission merchant or for a foreign broker on an omnibus basis must collect, and each futures commission merchant and foreign broker for which an omnibus account is being carried must deposit, initial and maintenance margin on each position so carried at a level no less than that established for customer accounts by the rules of the applicable contract market or other board of trade (or, if the board of trade does not specify any such margin level, the level specified by the relevant clearing organization), *i.e.,* on a gross margin basis, and, in the case of (b), addressing entitlement to spread or hedge margin treatment, that where an FCM carries a futures, options, or Cleared Swaps position for another futures commission merchant or for a foreign broker on an omnibus basis allows a position to be margined as a spread position or as a hedged position in accordance with the rules of the applicable contract market, the carrying futures commission merchant must obtain and retain a written representation from the futures commission merchant or from the foreign broker for which the omnibus account is being carried that each such position is entitled to be so margined.

Under this proposal, clearing FCM initial and maintenance margin requirements for separate accounts of the same customer are proposed to be calculated on a gross basis as the margin for accounts of distinct customers.[221] The Commission preliminarily believes

[213] FIA Comment Letter.

[214] *See* § 39.13(g)(8)(i).

[215] *See* Gross Margining of Omnibus Accounts, 46 FR 62864 (Dec. 29, 1981).

[216] *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69375 (Nov. 8, 2011).

[217] *See id.,* regulation § 39.13(g)(8)(i).

[218] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69375–69376.

[219] *Id.* at 69376 n. 133 (citing CPSS–IOSCO Consultative Report [on PFMI], Principle 14: Segregation and Portability, Explanatory Notes 3.14.6 and 3.14.8, at 67–68).

[220] By contrast, the Commission has imposed limits on holding the foreign futures or foreign options secured amount outside the United States. *See* regulation § 30.7(c) (limiting such amounts to 120% of the total amount of funds necessary to meet margin and prefunding margin requirements established by rule, regulation or order of foreign boards of trade or foreign clearing organizations, or to meet margin calls issued by foreign brokers carrying the 30.7 customers' foreign futures and foreign options positions.) Requiring an FCM to send a larger amount of 30.7 funds upstream to a foreign broker or foreign clearing organization would run counter to the regulation's goal of limiting such amounts. Accordingly, the Commission is not proposing to require gross margining with respect to 30.7 accounts.

[221] *See* proposed regulation § 1.44(g)(2).

it is important to continuity of risk management that the same approach also be applied in the case of a non-clearing (depositing) FCM whose accounts are carried by a clearing (carrying) FCM, with respect to the amount that depositing FCM is required to deposit, and that the carrying FCM is required to collect.[222] The Commission is therefore proposing to amend regulation § 1.58 to add new paragraph (c) providing that, where an FCM has established an omnibus account that is carried by another FCM, and the depositing FCM has elected to treat the separate accounts of a customer as accounts of separate entities for purposes of proposed regulation § 1.44, then the depositing FCM must calculate initial and maintenance margin for purposes of regulation § 1.58(a) separately for each separate account.[223]

N. Proposed Amendments to Regulation § 1.73

The Commission proposes to amend regulation § 1.73 to add new paragraph (c) providing that an FCM that is not a clearing member of a DCO but that treats the separate accounts of a customer as accounts of separate entities for purposes of proposed regulation § 1.44 shall comply with regulation § 1.73(a) and (b) with respect to accounts and separate accounts of separate account customers receiving separate treatment, as if the FCM were a clearing member of a DCO. Regulation § 1.73 currently sets forth risk management requirements only for FCMs that are clearing members of DCOs. The Commission proposes this amendment to ensure that, where non-clearing FCMs are engaging in separate account treatment, they are required to comply with the same baseline risk management requirements with respect to those separate accounts as their clearing counterparts do with respect to all accounts. In particular, this amendment will link with a non-clearing FCM's compliance with proposed regulation § 1.44(g)(1)'s stress testing and credit limit requirements. Since 2019, clearing FCMs have successfully applied regulation § 1.73(a), in conjunction with the no-action position's stress testing and credit limit conditions,[224] to manage the risk of accounts subject to separate treatment. In proposing to codify the no-action position in part 1 of the Commission's regulations, the Commission believes it would be prudent from a customer funds protection perspective, and a systemic risk mitigation perspective, to ensure that any FCMs that provide for separate account treatment, whether clearing or non-clearing, do so subject to similarly heightened risk management requirements. The Commission expects that, by applying the heightened risk management requirements applicable to clearing FCMs to all of a non-clearing FCM's accounts for a customer receiving separate treatment, a non-clearing FCM would be better able to detect and prevent the emergence of risks that could lead to operational or financial distress at such customer, reducing the potential risk of a default (or a failure to maintain adequate customer funds) by the non-clearing FCM.

O. Proposed Amendments to Regulation § 30.2

Commission regulation § 30.2(b) currently excludes an FCM engaging in foreign futures and foreign option transactions for 30.7 customers from certain provision of the Commission's regulations, including regulation § 1.44, in recognition that such transactions are entered into on contract markets that are subject to regulation by non-U.S. authorities.[225] Regulation § 1.44 is currently reserved, and the Commission is proposing to amend regulation § 30.2(b) to remove regulation § 1.44 from the list of excluded regulations.[226]

The proposed amendment to regulation § 30.2(b) is consistent with the proposed imposition of the Margin Adequacy Requirement on 30.7 accounts and the proposed definition of the term ''account'' in regulation § 1.44(a), which would include 30.7 accounts in addition to futures accounts and Cleared Swaps Customer Accounts.

The Commission is also proposing to remove the exclusion of regulations §§ 1.41–1.43 from applicability to part 30. When regulation § 30.2 was promulgated in 1987 as part of the establishment of part 30,[227] it explicitly provided that certain of its existing regulations would not be applicable ''to the persons and transactions that are subject to the requirements of'' part 30. At that time, regulations §§ 1.41–1.43 addressed, respectively, crop or market information letters, filing of contract market rules with the Commission, and warehouses, depositories, and other similar entities. Those regulations were subsequently deleted, and those sections were reserved.

When the Commission revised its part 190 bankruptcy rules in 2021, the Commission added, as regulations §§ 1.41–1.43, designation of hedging accounts, delivery accounts, and conditions on accepting letters of credit as collateral. Each of these regulations was intended to apply to foreign futures accounts. However, regulation § 30.2 was not amended to conform with that intention. The Commission proposes to address that now.

P. Proposed Amendments to Regulation § 39.13(g)(8)

Regulation § 39.13(g)(8)(i) requires DCOs to collect customer margin from their clearing members on a gross basis, that is, collect margin equal to the sum of initial margin amounts that would be required by the DCO for each individual customer within that account if each individual customer were a clearing member.[228] The Commission proposes to add new regulation § 39.13(g)(8)(i)(E) to clarify that, for purposes of this regulation on gross margining, each separate account of a separate account customer shall be treated as an account of a separate individual customer.

The Commission also proposes to amend regulation § 39.13(g)(8)(iii), to provide that such paragraph shall apply except as provided for in regulation § 1.44. The Commission proposes this amendment to ensure that the carve-out (represented by proposed regulation § 1.44(c) through (h)) to the Margin Adequacy Requirement (represented by proposed regulation § 1.44(b)) that would apply to all FCMs is also effectuated with respect to the Margin Adequacy Requirement applicable to clearing members through DCOs pursuant to regulation § 39.13(g)(8)(iii).

Question 8: If the Commission includes the Margin Adequacy Requirement and requirements regarding separate account treatment in

[222] As a result, each customer with accounts subject to separate account treatment should be subject to the same or greater margin requirements as such customer would be subject to if its separate accounts were margined on a combined account basis.

[223] If non-clearing FCM *N* has customers *P* and *Q,* and *Q* is a separate account customer with separate accounts *R, S,* and *T,* then *N* would calculate, on a gross basis, the margin requirements for accounts *P, R, S,* and *T,* consistent with proposed regulation § 1.58(c). That gross margin requirement, across those four accounts, will be the amount that, consistent with regulation § 1.58(a), *N* must deposit and *N*'s clearing FCM, *C,* must collect.

[224] CFTC Letter No. 19–17 (Condition 3).

[225] For example, regulation § 30.2 excludes persons and foreign futures and foreign options transactions from the segregation requirements of § 1.20, which applies only to futures customer funds and transactions. Commission regulation § 30.7 addresses the segregation requirements of 30.7 customer funds.

[226] Regulation § 1.44 is currently reserved and, accordingly, does not impose any regulatory obligation on an FCM. When regulation § 30.2 was promulgated, regulation § 1.44 addressed records and reports of warehouses, depositories, and other similar entities; this regulation was subsequently deleted.

[227] Foreign Futures and Foreign Options Transactions, 52 FR 28980 (Aug. 5, 1987).

[228] 17 CFR 39.13(g)(3)(i)(A).

Part 1 of its regulations as proposed, should the Commission remove regulation 39.13(g)(8)(iii)?

III. Cost Benefit Considerations

A. Introduction

Section 15(a) of the CEA requires the Commission to ''consider the costs and benefits'' of its actions before promulgating a regulation under the CEA or issuing certain orders.[229] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency; competitiveness, and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations (collectively referred to herein as the Section 15(a) Factors). Accordingly, the Commission considers the costs and benefits associated with the proposed regulation in light of the Section 15(a) Factors. In conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern. In the sections that follow, the Commission considers: (1) the costs and benefits of the proposed regulation; (2) the alternatives contemplated by the Commission and their costs and benefits; and (3) the impact of the proposed regulation on the Section 15(a) Factors.

By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new rule or to determine whether the benefits of the adopted rule outweigh its costs. Nonetheless, the Commission has endeavored to assess the expected costs and benefits of the proposed amendments in quantitative terms, including Paperwork Reduction Act (PRA)-related costs, where practicable. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable proposed amendments in qualitative terms. However, the Commission lacks the data necessary to reasonably quantify all of the costs and benefits considered below. In some instances, it is not reasonably feasible to quantify the costs and benefits to FCMs with respect to certain factors, such as market integrity. Additionally, any initial and recurring compliance costs for any particular FCM will depend on its size, existing infrastructure, practices, and cost structures. The Commission welcomes comments on any such costs, especially by clearing FCMs, who may be better able to provide quantitative costs data or estimates, based on their respective experiences relating to the application of CFTC Letter No. 19–17. Notwithstanding these types of limitations, the Commission otherwise identifies and considers the costs and benefits of these proposed rule amendments in qualitative terms.

In the following consideration of costs and benefits, the Commission first identifies and discusses the benefits and costs attributable to the proposed rule amendments. Next, the Commission identifies and discusses the benefits and costs attributable to the proposed rule amendments as compared to alternatives to the proposed rule amendments. The Commission, where applicable, then considers the costs and benefits of the proposed rule amendments in light of the Section 15(a) Factors.

The Commission notes that this consideration of costs and benefits is based on, *inter alia,* its understanding that the derivatives markets regulated by the Commission function internationally, with (1) transactions that involve entities organized in the United States occurring across different international jurisdictions, (2) some entities organized outside of the United States that are prospective Commission registrants, and (3) some entities that typically operate both within and outside the United States, and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the proposed regulations on all relevant derivatives activity, whether based on their actual occurrence in the United States or on their connection with, or effect on, U.S. commerce.[230]

The Commission generally requests comment on all aspects of its cost-benefit considerations, including the identification and assessment of any costs or benefits not discussed herein; the potential costs and benefits of the alternatives that the Commission discussed in this release; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed rule amendments; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion. Commenters may also suggest other alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA and would provide a more appropriate cost-benefit profile.

The Commission is also including a number of questions for the purpose of eliciting cost and benefit estimates from public commenters wherever possible. Quantifying other costs and benefits, such as the effects of potential changes in the behavior of FCMs resulting from the proposal are inherently harder to measure. Thus, the Commission is similarly requesting comment through questions to help it better quantify these impacts. Due to these quantification difficulties, for this NPRM (Second Proposal), the Commission offers the following qualitative discussion of its costs and benefits.

1. Proposed Regulation

The Commission is proposing to promulgate new regulations in part 1 of its regulations designed to (1) further ensure that FCMs hold customer funds sufficient to cover the required initial margin for the customer's positions, by prohibiting an FCM from permitting customers to withdraw funds from their accounts with such FCM unless the net liquidating value plus the margin deposits remaining in the customer's account after the withdrawal would be sufficient to meet the customer initial margin requirements with respect to the products or portfolios in the customer's account (*i.e.,* the Margin Adequacy Requirement) (proposed regulation § 1.44(b)) and (2) permit FCMs to treat the separate accounts of a single customer as accounts of separate entities for purposes of the Margin Adequacy Requirement, subject to conditions designed to ensure that such separate account treatment is carried out in a documented and consistent manner, and that FCMs, their DSROs, and the Commission are apprised of, and able to respond to, conditions that, for risk mitigation reasons, would necessitate the cessation of such separate account treatment (proposed regulation § 1.44(c) through (h)).[231] The Commission is also proposing to revise regulations in parts 1, 22, and 30 of its regulations related to definitions, FCM minimum financial requirements, reporting, collection of margin, and clearing FCM risk management (proposed amendments to regulations §§ 1.3, 1.17, 1.20, 1.58, and 1.73, as well as §§ 22.2 and 30.7), and part 39 of its regulations related to DCO risk management (proposed

[229] 7 U.S.C. 19(a).

[230] *See, e.g.,* 7 U.S.C. 2(i).

[231] Proposed regulation § 1.44(a) provides definitions supporting the other paragraph of the regulation.

amendments to regulation § 39.13), to facilitate full implementation of the Margin Adequacy Requirement and conditions for separate account treatment.

2. Baseline: Current Part 1 and Regulation 39.13(g)(8)(iii)

The Commission identifies the costs and benefits of the proposed amendments relative to the baseline of the regulatory status quo. In particular, the baseline that the Commission considers for the costs and benefits of these proposed rule amendments is the Commission regulations now in effect; specifically, part 1 of the Commission's regulations (where the operative part of the proposed regulation would be codified) and regulation § 39.13(g)(8)(iii) (which contains the Commission's current Margin Adequacy Requirement). In considering the costs and benefits of the proposed regulation against this baseline, the Commission considers the costs and benefits for both clearing FCMs and non-clearing FCMs—the two categories of market participants that would be directly affected by the proposed regulation. To the extent that certain FCMs that are clearing members of DCOs have taken actions in reliance on CFTC Letter No. 19–17, the Commission recognizes the practical implications of those actions on the costs and benefits of the proposed regulation.

a. Baseline With Respect to Clearing FCMs

Regulation § 39.13(g)(8)(iii) currently provides that DCOs shall establish a Margin Adequacy Requirement for their clearing FCMs with respect to the products that the DCOs clear. Thus, under the status quo baseline, clearing FCMs are, albeit indirectly (through the operation of DCO rules designed to implement regulation § 39.13(g)(8)(iii)), subject to the Margin Adequacy Requirement for futures and Cleared Swaps. They are not, however, subject to the Margin Adequacy Requirement for foreign futures that are not cleared by a DCO.[232] Under the baseline—which does not include the effect of CFTC Letter No. 19–17 and its superseding letters—clearing FCMs are not permitted to engage in separate account treatment with respect to the Margin Adequacy Requirement.

b. Baseline With Respect to Non-Clearing FCMs

Commission regulations do not, either directly or indirectly, impose a Margin Adequacy Requirement on non-clearing FCMs. Accordingly, they currently have no need to engage in separate account treatment with respect to such a requirement.

The Commission's current part 1 regulations do not contain any requirements specifically related to the separate treatment of accounts. As noted above, under the baseline, clearing FCMs are not permitted to engage in separate account treatment with respect to regulation § 39.13(g)(8)(iii)'s Margin Adequacy Requirement, and non-clearing FCMs have no need to engage in separate account treatment with respect to the Margin Adequacy Requirement of regulation § 39.13(g)(8)(iii) (because DCO rules addressing that regulation do not apply to non-clearing FCMs). Additionally, a non-clearing FCM would not be permitted to treat the accounts of a single customer as accounts of separate entities for purposes of regulatory requirements imposed by the Commission (*e.g.,* capital requirements under regulation § 1.17).

B. Consideration of the Costs and Benefits of the Commission's Action

1. Benefits

a. Margin Adequacy Requirement (Proposed Regulation § 1.44(b))

As discussed above, the Commission is proposing to (a) promulgate new regulations in part 1 of its regulations designed to (1) further ensure that FCMs hold customer funds sufficient to cover the required initial margin for the customer's positions, and (2) permit FCMs to treat the separate accounts of a single customer as accounts of separate entities for purposes of such Margin Adequacy Requirement, subject to requirements designed to mitigate the risk that such separate account treatment could result in or worsen an under-margining scenario; and (b) make supporting amendments in parts 1, 22, 30, and 39 to facilitate the Margin Adequacy Requirement and requirements for separate account treatment, namely through changes to definitions, amendment of certain margin calculation requirements, application of certain risk management requirements to non-clearing FCMs engaged in separate account treatment, and amendment of regulation § 39.13(g)(8)(iii)'s Margin Adequacy Requirement to accommodate separate account treatment under the proposed regulation.

Existing regulation § 39.13(g)(8)(iii) establishes a Margin Adequacy Requirement, designed to mitigate the risk that a clearing member fails to hold, from a customer, funds sufficient to cover the required initial margin for the customer's cleared positions, and thereby designed to avoid the risk that a clearing FCM will, whether deliberately or inadvertently, misuse customer funds by using one customer's funds to cover another customer's margin shortfall. DCO Core Principle D, which concerns DCO risk management, imposes a number of duties upon DCOs related to their ability to manage the risks associated with discharging their responsibilities as DCOs, such as measuring credit exposures, limiting exposures to potential default-related losses, setting margin requirements, and establishing risk management models and parameters.[233] Among other requirements, Core Principle D requires that the margin required from each member and participant of a DCO be sufficient to cover potential exposures in normal market conditions.[234] Regulation § 39.13 implements Core Principle D, including through regulation § 39.13(g)(8)(iii)'s restrictions on withdrawal of customer initial margin.

With respect to clearing FCMs, because regulation § 39.13(g)(8)(iii) already results in the application of a Margin Adequacy Requirement to clearing FCMs through DCO rules in the context of futures and Cleared Swaps, the benefits of a Margin Adequacy Requirement in part 1 that applies directly to FCMs will be more limited than the benefits with respect to non-clearing FCMs. However, the Commission preliminarily believes that, to the extent there are failures in compliance with respect to margin adequacy, proposed regulation § 1.44(b) will provide an additional avenue (*i.e.,* through the Commission) for monitoring and enforcement of margin adequacy for clearing FCMs. Moreover, proposed regulation § 1.44(b) will expand the Margin Adequacy Requirement to apply to foreign futures transactions cleared

[232] While existing regulation § 39.13(g)(8)(iii) does not require DCOs to impose a Margin Adequacy Requirement on their clearing FCMs with respect to such FCMs' foreign futures (part 30) accounts, it may well be the case that such FCMs' existing systems and procedures already apply that requirement to those accounts, because it may be impracticable operationally to treat those accounts differently from futures and Cleared Swaps Accounts. If that assumption is correct, the proposed part 1 Margin Adequacy Requirement is unlikely to impose significant costs on, or cause significant benefits with respect to, clearing FCMs. The Commission seeks comment on the validity of that assumption.

[233] Section 5b(c)(2)(D) of the CEA, 7 U.S.C. 7a–1(c)(2)(D).

[234] Section 5b(c)(2)(D)(iv) of the CEA, 7 U.S.C. 7a–1(c)(2)(D)(iv).

through both clearing and non-clearing FCMs.[235]

With respect to non-clearing FCMs, the Margin Adequacy Requirement of proposed regulation § 1.44(b) will result in similar benefits to those currently experienced with respect to clearing FCMs under regulation § 39.13(g)(8)(iii). Regulation § 39.13(g)(8)(iii) provides that DCOs shall require clearing FCMs to ensure that their customers do not withdraw funds from their accounts unless sufficient funds remain to meet customer initial margin requirements with respect to all products and swap portfolios held in the customers' accounts and cleared by the DCO. This requirement is designed to prevent the under-margining of customer accounts, and thus mitigate the risk of a clearing member default and the consequences that could accrue to the broader financial system.

Section 4d(a)(2) of the CEA and regulation § 1.20(a) require an FCM to separately account for and segregate all money, securities, and property which it has received to margin, guarantee, or secure the trades or contracts of its commodity customers, and section 4d(a)(2) of the CEA and regulation § 1.22(a) prohibit an FCM from using the money, securities, or property of one customer to margin or settle the trades or contracts of another customer.[236]

The Commission preliminarily believes that proposed regulation § 1.44(b), which will apply a Margin Adequacy Requirement directly to FCMs, both clearing and non-clearing, would further achieve the benefits of serving to protect customer funds, and mitigating systemic risk that could arise from misuse of customer funds, by applying the under-margining avoidance requirements of regulation § 39.13(g)(8)(iii) directly to all FCMs. As noted above, this Margin Adequacy Requirement does not currently apply to non-clearing FCMs. The Commission further preliminarily believes that the application of such a Margin Adequacy Requirement to all FCMs (and to all three types of customer transactions, including (additionally) foreign futures transactions), through more broadly preventing under-margining situations, is reasonably necessary to better effectuate CEA section 4d(a)(2) and to better accomplish the purposes of the CEA (from section 3(b)) of ''avoidance of systemic risk'' and ''protecting all market participants from . . . misuses of customer assets.''

b. Requirements for Separate Account Treatment (Proposed Regulation § 1.44(c) Through (h) and Supporting Amendments to Regulations §§ 1.3, 1.17, 1.20, 1.32, 1.58, 1.73, 22.2, 30.2, 30.7, and 39.13(g)(8))

As discussed in section I.B above, there are a number of commercial reasons why an FCM or customer may wish to treat the separate accounts of a single customer as accounts of separate entities. Combination of all accounts of the same customer within the same regulatory account classification for purposes of margining and determining funds available for disbursement may make it challenging for certain customers and their investment managers to achieve certain commercial purposes.[237] For example, where a customer has apportioned assets among multiple investment managers, neither the customer nor their investment managers may be able to obtain certainty that the individual portion of funds allocated to one investment manager will not be affected by the activities of other investment managers.

Where FCMs are able to treat the separate accounts of a single customer as accounts of separate entities for purposes of the proposed Margin Adequacy Requirement, customers benefit from being better able to leverage the skills and expertise of investment managers, and realize the benefits of a balance of investment strategies in order to meet specific commercial goals. Moreover, as discussed further below, clearing FCMs and customers of clearing FCMs already relying on the no-action position would also obtain the benefit of continuing to leverage existing systems and procedures to provide for separate account treatment.

The Commission believes that, where such separate account treatment is offered, it should be subject to safeguards that mitigate the risk that it will result in the under-margining of customer accounts. By applying regulatory safeguards designed to preserve the goals of the Margin Adequacy Requirement during such treatment, the proposal would achieve the benefit of permitting separate account treatment in a manner that would not contravene the customer funds protection and risk mitigation purposes of the CEA and Commission regulations.

The Commission also believes that several years of successful separate account activity based on the no-action conditions of CFTC Letter No. 19–17 and its superseding letters by DCOs, clearing FCMs, and customers demonstrate that separate account treatment can be successfully applied, subject to certain safeguards.

As discussed above, section 4d(a)(2) of the CEA and Commission regulations §§ 1.20(a) and 1.22(a) require an FCM to account separately for and segregate futures customer funds and prohibit FCMs from using one customer's funds to cover another customer's margin shortfall[238]—requirements which serve to further the CEA's purposes (as set forth in section 3(b)) of protecting customer funds and avoiding systemic risk.

Part 1 of the Commission's regulations contain the principle regulations applicable to the operation of FCMs that support the above-described statutory purposes and requirements. Such regulations include requirements related to financial and other reporting, risk management, treatment of customer funds, and recordkeeping, among others. As noted above, the Commission believes that a Margin Adequacy Requirement, directly applied to all FCMs and combined with separate account treatment, can further CEA section 4d(a)(2)'s customer fund protection and risk avoidance requirements[239] while offering commercial utility for a variety of market participants. However, part 1 does not currently contain any regulations imposing such a Margin Adequacy Requirement, or governing the manner in which separate account treatment may be conducted.

The proposed regulation is designed to achieve the benefit of bridging this gap by

(i) inserting a Margin Adequacy Requirement (proposed regulation § 1.44(b)) into part 1 to ensure further that an FCM (whether a clearing or non-clearing FCM) does not permit margin withdrawals that would create or exacerbate an under-margining situation,

(ii) allowing FCMs to treat the separate accounts of a single customer as accounts of separate entities for purposes of the Margin Adequacy Requirement, with the benefits

[235] To the extent that FCMs already follow the Margin Adequacy Requirement for foreign futures, *e.g.,* for reasons of operational convenience (for example, if a clearing FCM applies the Margin Adequacy Requirement to its customer risk management for futures and Cleared Swaps, it may be easier to also apply it in the context of customer risk management for foreign futures than to have two different approaches) or as a matter of prudent risk management, the related costs and benefits would be reduced.

[236] 7 U.S.C. 6d(a)(2); 17 CFR 1.20(a); 17 CFR 1.22(a).

[237] *See* First FIA Letter.

[238] *See also* the analogous requirements in CEA §§ 4d(f)(2) and 4(b), and regulations §§ 22.2 and 30.7 (for, respectively, Cleared Swaps and foreign futures).

[239] And, similarly, those of CEA section 4d(f)(2) and 4(b).

discussed above (proposed regulation § 1.44(c)),

(iii) establishing the manner in which FCMs may elect to engage in separate account treatment for a particular customer, with the benefit of identifying both for the FCM and its supervisory authorities (the Commission and SROs) whether it is engaging in separate account treatment, and, if so, for which customers, with the benefit of facilitating effective regulatory/self-regulatory supervision (proposed regulation § 1.44(d)),

(iv) setting forth financial and operational conditions for customers and FCMs that would identify risk management issues that are sufficiently significant to disqualify a particular separate account customer (or an FCM with respect to all of its separate account customers) from separate account treatment, with the benefit of mitigating risk by suspending separate account treatment under such circumstances (proposed regulation § 1.44(e)),

(v) requiring that separate accounts be on a one business day margin call, while setting forth limited circumstances where failure to actually receive margin on a same-day basis may be excused, with the benefit of limiting the extent of potential under-margining, (proposed regulation § 1.44(f)), and

(vi) establishing requirements designed to ensure that separate account treatment is carried out in a consistent and documented manner, and carrying that treatment through to related FCM capital, customer funds protection, and risk management requirements in part 1 (proposed regulation § 1.44(g) through (h)), with the benefit of further ensuring that the risk management objectives of the Margin Adequacy Requirement continue to be met during separate account treatment.

Proposed revisions to regulations §§ 1.3, 1.17, 1.20, 1.32, 1.58, 1.73, 22.2, 30.2, 30.7, and 39.13(g)(8)(i) are designed to define terms used in proposed regulation § 1.44 and facilitate implementation of provisions in proposed regulation § 1.44 that would affect compliance with financial requirements for FCMs, collection of margin, and FCM risk management. Additionally, a proposed revision to regulation § 39.13(g)(8)(iii) is intended to make clear that regulation § 39.13(g)(8)(iii)'s Margin Adequacy Requirement, applicable directly to DCOs and indirectly to clearing FCMs, and similar in substance to the Margin Adequacy Requirement of proposed regulation § 1.44(b), does not require DCOs to preclude separate account treatment carried out subject to proposed regulation § 1.44.

The Commission preliminarily believes that proposed regulation § 1.44(c) through (h), and proposed supporting amendments to regulations §§ 1.3, 1.17, 1.20, 1.32, 1.58, 1.73, 22.2, 30.2, 30.7, and 39.13 would benefit both clearing FCMs and non-clearing FCMs, in addition to customers and other market participants, by providing a comprehensive framework that affirms the availability of separate account treatment, and sets forth the manner in which such treatment can be carried out consistent with the customer fund protection and risk avoidance objectives of regulation § 39.13(g)(8)(iii) (as applied via DCO rules, with respect to clearing FCMs) and proposed regulation § 1.44(b)'s Margin Adequacy Requirement (with respect to both clearing FCMs and non-clearing FCMs).

The Commission additionally notes that the allowance of, and requirements for separate account treatment in proposed regulation § 1.44(c) through (h) are substantially similar to the conditions to the staff no-action position in CFTC Letter No. 19–17. A number of clearing FCMs have adopted some practices based on this no-action position provided by Commission staff. As such, to the extent that some clearing FCMs have relied on the no-action position, the actual costs and benefits of the proposed rule amendments as realized in the market may not be as significant as a comparison of the rule to the regulatory baseline would suggest.[240]

Moreover, if the Commission were to allow the no-action position in CFTC Letter No. 19–17 to expire, and did not adopt the proposed regulation, then clearing FCMs that already engage in separate account treatment consistent with the terms of CFTC Letter No. 19–17 would be required to reverse those changes. This could entail significant expenditures of funds and resources in order to rework systems, procedures, and customer documentation for such FCMs.[241] Hence, actual benefits to the regulation may accrue from the ability of many FCMs to avoid these costs.

Request for Comment

Question 9: What evidence can be provided that customers have been able to achieve better performance by virtue of allowing separate account treatment? Is there evidence of under margining due to separate account treatment since CFTC Letter No. 19–17 was issued?

Question 10: Is there evidence of regulatory arbitrage between clearing FCMs and non-clearing FCMs on the grounds that the latter are not currently subject to the Margin Adequacy Requirement?

2. Costs

The proposed regulation would (i) amend part 1 of the Commission regulations to add a new requirement (proposed regulation § 1.44(b)) for FCMs to hold customer funds sufficient to cover the required initial margin for the customer's positions (the Margin Adequacy Requirement); (ii) amend part 1 to, in the same new section, (proposed regulation § 1.44(c–h)) permit FCMs, subject to certain conditions and for purposes of the Margin Adequacy Requirement, treat the accounts of a single customer as accounts of separate entities; and (iii) amend existing regulations in parts 1 and 39 to facilitate implementation of the proposed new regulation. The Commission herein discusses the costs related to each such set of amendments with respect to clearing and non-clearing FCMs. There are currently 60 registered FCMs, and of these, the Commission estimates that approximately 40 are clearing FCMs and approximately 20 are non-clearing FCMs.[242] While the proposed regulation would require all FCMs to comply with the Margin Adequacy Requirement, it would not require FCMs to engage in separate account treatment, and the Commission does not expect that all FCMs will engage in separate account treatment.[243] Accordingly, as noted in connection with the Commission's discussion below related to the PRA, the Commission estimates that 30 FCMs

[240] For those clearing FCMs that currently choose not to engage in separate account treatment, and therefore, do not adhere to CFTC Letter No. 19–17, but choose to do so after this proposed regulation were to be adopted, the Commission submits that there will be significant costs; similar to those faced by non-clearing FCMs. This is discussed further below in the costs section.

[241] *See* Second FIA Letter. For instance, FIA noted that clearing FCMs would again be required to review and amend customer agreements, noting that negotiations to amend such agreements would likely prove ''extremely difficult'' as ''advisers would seek to assure that their ability to manage their clients' assets entrusted to them would not be adversely affected by the actions (or inactions) of another adviser.'' FIA letter dated May 11, 2022 to Robert Wasserman (Third FIA Letter). FIA further noted that ''an adviser may be less likely to use exchange-traded derivatives to hedge its customers' cash market positions if the adviser could not have confidence that it would be able to withdraw its customers' excess margin as necessary to meet its obligations in other markets.'' *Id.*

[242] CFTC, Financial Data for FCMs, Sept. 20, 2023, available at *https://www.cftc.gov/MarketReports/financialfcmdata/index.htm.*

[243] *See* CME Comment Letter (noting that 14 of 42 clearing FCMs at CME had notified CME that they intended to avail themselves of the no-action position in CFTC Letter No. 19–17, but that a number of these firms did not ultimately implement separate account treatment).

will choose to apply separate account treatment.

a. Margin Adequacy Requirement (Proposed Regulation § 1.44(b))

The Margin Adequacy Requirement of proposed regulation § 1.44(b) would require FCMs to hold customer funds sufficient to cover the required initial margin for customer positions. With respect to clearing FCMs, the Commission estimates that the cost of compliance would be *de minimis.* As discussed above, existing regulation § 39.13(g)(8)(iii) provides that a DCO shall require its clearing members to ensure that their customers do not withdraw funds from their accounts with such clearing members unless the net liquidating value plus the margin deposits remaining in a customer's account after such withdrawal are sufficient to meet the customer initial margin requirements with respect to all products and swap portfolios held in such customer's account which are cleared by the DCO. Thus, regulation § 39.13(g)(8)(iii) applies a requirement that is substantively identical to the proposed requirement indirectly to clearing FCMs, through the rules of their DCOs. Because clearing FCMs are already functionally subject to the Margin Adequacy Requirements of proposed regulation § 1.44(b) as a result of regulation § 39.13(g)(8)(iii), the Commission does not expect any significant additional cost of compliance for clearing FCMs.

Non-clearing FCMs are not currently subject to a Margin Adequacy Requirement promulgated by the Commission, and the Commission expects that the costs for a non-clearing FCM to comply could be significant. The Commission expects that compliance with the Margin Adequacy Requirement for a non-clearing FCM may entail many of the same types of costs noted below in connection with compliance with separate account treatment requirements. Such costs could include personnel, operational, and other costs related to updating internal policies and procedures, updating or renegotiating customer documentation, and implementing or configuring internal systems to identify and prevent margin withdrawals that would be inconsistent with the proposed Margin Adequacy Requirement. The Commission expects that the compliance costs for non-clearing FCMs could vary significantly depending on factors such as the FCM's size, customer base, and existing compliance infrastructure and resources. The extent to which non-clearing FCMs need to develop new tools, policies, and procedures may however be reduced, to the extent that such FCMs already voluntarily take steps to avoid distributing funds back to their customers in a manner that would create or exacerbate an undermargined condition for a customer, as a means of managing risks to the FCM.

Moreover, while promoting margin adequacy is a policy goal of many of the regulations in CEA, there are potential costs to individual investors of the Margin Adequacy Requirement. In general, tightening the rules concerning margins can reduce the return to investors, and some effects of this type could result from requiring margin adequacy at non-clearing FCMs.

b. Requirements for Separate Account Treatment (Proposed Regulation § 1.44(c) Through (h) and Supporting Amendments to Regulations §§ 1.3, 1.17, 1.20, 1.32, 1.58, 1.73, 22.2, 30.2, 30.7, and 39.13(g)(8))

In addition to the Margin Adequacy Requirement of proposed regulation § 1.44(b), the Commission is also proposing in proposed regulation § 1.44(c) through (h) rules to allow FCMs to apply separate account treatment for purposes of the Margin Adequacy Requirement, and requirements for the application of such treatment. The proposed regulation would not require FCMs to apply separate account treatment, and FCMs that do not presently apply separate account treatment, and do not desire to do so in the future, would generally not incur any costs related to the application of such treatment. Furthermore, the Commission believes that an FCM electing to allow for separate account treatment will do so because such FCM believes the benefits of doing so will exceed the costs of doing so.

With respect to FCMs that choose to engage in separate account treatment under the proposed regulation, the Commission expects that clearing FCMs and non-clearing FCMs will generally incur the same types of compliance costs, as there are no applicable requirements for separate account treatment under the baseline with respect to either clearing FCMs or non-clearing FCMs, and the requirements of the proposed regulation generally do not distinguish between clearing FCMs and non-clearing FCMs.[244]

The costs of the proposed regulation related to application of separate account treatment will likely vary across FCMs depending on the nature of their existing rule and compliance infrastructures, and as such would be difficult to quantify with precision. However, for those FCMs that choose to engage in separate account treatment in a manner consistent with the proposed regulation, the costs of compliance could be significant, and may vary based on factors such as the size and existing compliance resources of a particular FCM, as well as the extent to which the FCM's existing risk management policies and procedures already incorporate risk management measures that overlap with those required under the proposed rule. FCMs that wish to allow for separate account treatment would likely incur costs in connection with updating their policies and procedures, internal systems, customer documentation and (re-)negotiation of customer agreements to allow for separate account treatment under the conditions codified in the proposed regulation.

In a letter to the Commission staff dated April 1, 2022, FIA noted that, ''For many [clearing] FCMs and their customers, the terms and conditions of the no-action position . . . presented significant operational and systems challenges,'' as clearing FCMs were required to ''(i) adopt new practices for stress testing accounts; (ii) review and possibly change margin-timing expectations for non-US accounts; (iii) undertake legal analysis to clarify interpretive questions; and (iv) revise their segregation calculation and recordkeeping practices,'' as well as engage in ''time-consuming documentation changes and customer outreach.'' [245]

FIA further described these challenges in a letter to the Commission staff dated May 11, 2022, noting that in order to meet the conditions of the no-action

[244] There are two distinctions between clearing and non-clearing FCMs relevant to separate account compliance costs.

The first would not create a difference in costs: Gross collection of margin without netting between separate accounts is required by proposed regulation § 1.44(g)(2) and existing regulation § 39.13(g)(8)(i), as clarified by proposed regulation § 39.13(g)(8)(i)(E) for clearing FCMs, and proposed regulation § 1.58(c) creates this requirement for non-clearing FCMs.

The second would create some difference in additional costs: Under current regulation § 1.73, clearing FCMs are required to establish risk-based credit limits, screen orders for compliance with those limits, and monitor adherence to those limits, as well as conduct stress testing of positions that could pose material risk. Non-clearing FCMs are not currently required to do these things. Under proposed regulations §§ 1.44(g)(1) and 1.73(c), they would be required to do so for separate account customers and separate accounts, both on an individual separate account and aggregate basis. As such, there are additional incremental costs faced by non-clearing FCMs that choose separate account treatment.

[245] FIA letter dated Apr. 1, 2022 to Clark Hutchison and Amanda Olear (Second FIA Letter).

position, clearing FCMs were required to review and in some cases amend customer agreements, and identify and implement information technology systems changes.[246] FIA also asserted that clearing FCMs were likely required to revise internal controls and procedures.[247] FIA stated that while the costs incurred by each clearing FCM varied depending on its customer base, among larger clearing FCMs with a significant institutional customer base, personnel costs would have included identifying and reviewing up to 3,000 customer agreements to determine which agreements required modification, and then negotiating amendments with customers or their advisers.[248] FIA further stated that because the relevant provisions of these agreements were not uniform, they generally required individual attention.[249]

The Commission anticipates that similar costs would arise for FCMs attempting to meet the requirements of the proposed separate accounts rule.

Of the costs that FCMs would likely incur related to application of separate account treatment, some costs would be incurred on a one-time basis (*e.g.,* updates to systems, procedures, disclosure documents, and recordkeeping practices, and renegotiation of customer agreements with separate account customers), and some would be recurring (*e.g.,* monitoring compliance with the one-day margin call requirement and the other conditions for ordinary course of business). However, those costs could vary widely on an FCM-by-FCM basis, depending on factors such as the number of customers at a particular FCM who wish to have separate treatment applied to their accounts; thus, for some FCMs, ongoing costs of maintaining compliance may be less significant.

While the Commission, in connection with its Paperwork Reduction Act assessment below,[250] estimates that certain reporting, disclosure, and recordkeeping costs would not be significant on an entity level, as FIA noted, taken as a whole, compliance with the conditions that the proposed regulation would codify could result in significant operational and systems costs. In other words, the Commission anticipates that FCMs may incur significant costs related to designing and implementing new systems, or enhancing existing systems, to comply with the proposed regulation, as well as negotiation costs, even where direct recordkeeping costs may not be significant on an entity-by-entity basis.[251]

In terms of implementation costs relative to the baseline (that does not consider the effects of NAL 19–17), the Commission believes clearing FCMs and non-clearing FCMs will be subject to the same types of costs related to application of separate account treatment.

As discussed above, a number of clearing FCMs have adopted some current practices based not only upon regulation § 39.13(g)(8)(iii)'s existing Margin Adequacy Requirement applicable to clearing FCMs through the rules of such clearing FCMs' DCOs, but also on the no-action position provided by Commission staff in CFTC Letter No. 19–17, and decisions by DCOs to provide relief from their rules adopting a Margin Adequacy Requirement in line with (and subject to the conditions specified in) that staff no-action position. As such, to the extent that clearing FCMs have relied on the no-action position, the actual costs and benefits of the proposed rule amendments as realized in the market may not be as significant as a comparison of the rule to the regulatory baseline would suggest.[252] Specifically, to the extent clearing FCMs already rely on the effects of the no-action position, the tools (*e.g.,* software) and policies and procedures necessary to comply with the proposed regulation on an ongoing basis will largely have already been built, and the costs associated with compliance will largely have already been incurred.[253] (This would not apply to non-clearing FCMs, who have no current need to rely on the effects of the no-action position.) However, the Commission notes that because the provisions of the proposed regulation vary in some respects from the terms of the no-action position, at least some additional costs are likely to be incurred by clearing FCMs that already rely on the no-action position.

In addition to compliance costs, one other type of costs should be noted: The Commission is of the view that the risk mitigants in proposed regulation § 1.44(c) through (h) would achieve the benefits of the Margin Adequacy Requirement while permitting separate account treatment. However, there does exist a possibility that, despite these risk mitigants, an under-margin condition could exist, followed by a default by the customer to the FCM, and a consequent default by the FCM upstream (either to a DCO or to a clearing FCM), where the losses due to that default would be greater than they would have been absent separate account treatment.

Question 11: Are the descriptions of the types of costs that would be incurred by FCMs to implement each of the Margin Adequacy Requirement and Separate Account Treatment under the proposed rules appropriately comprehensive? What data can be provided about the magnitude of these costs, either by type or in the aggregate?

Question 12: The Commission requests comment on the extent to which FCMs that are not presently clearing members that rely on the no-action position in CFTC Letter No. 19–17 would, following implementation of the proposed regulation, seek to engage in separate account treatment. Commenters are requested to provide data where available.

Question 13: The Commission requests comment regarding whether there are FCMs that chose not to rely on the no-action position provided by CFTC Letter No. 19–17 due to the conditions required to rely on that position. The Commission further requests comment on how the implementation of those conditions in the current rulemaking proposal could be modified to mitigate the burden of compliance while achieving the goals of mitigating systemic risk and protecting customer funds.

C. Costs and Benefits of the Commission's Action as Compared to Alternatives

The Commission considered as an alternative to the proposed regulation

[246] Third FIA Letter. FIA noted that these changes were particularly challenging for FCMs that are part of a bank holding company structure, as ''[m]odifying integrated technology information systems across a bank holding company structure is complicated, expensive and time-consuming.'' *Id.*

[247] *Id.*

[248] *Id.*

[249] *Id.*

[250] As discussed below, the Commission staff estimates total annual costs of $1,700,010 across 30 respondents with respect to reporting, disclosure, and recordkeeping requirements; however, as certain such costs are one-time costs, the Commission staff expects such figure would be reduced after the first year of application of separate account treatment.

[251] This may be true to a somewhat lesser extent with respect to new entrants to the FCM business, in that those FCMs would incur the cost of implementing policies, procedures, and systems that comply with the conditions of the proposed regulation, but would not need to retrofit existing policies, procedures, and systems.

[252] For those clearing FCMs that currently choose not to engage in separate account treatment, and therefore, do not adhere to CFTC Letter No. 19–17, but choose to do so after this proposed regulation were to be adopted, the Commission submits that there will be significant costs similar to non-clearing FCMs.

[253] Communications from FIA indicate that significant resources have, in fact, been expended to meet the conditions of the NAL. *See* Second FIA Letter.

codifying the no-action position absent the conditions. This alternative would preserve the benefits of separate account treatment for FCMs and customers. However, as discussed further below, the conditions of the no-action position—proposed to be codified herein on an FCM-wide basis—are designed to permit separate account treatment only to the extent that such treatment would not contravene the risk mitigation goals of regulation § 39.13 (and the Margin Adequacy Requirement of proposed regulation § 1.44(b)). The Commission preliminarily believes that codifying the staff no-action position without the conditions would intensify risks for DCOs, FCMs, and customers. For instance, without a requirement to cease separate account treatment in cases in which a customer is in financial distress, it is more likely that an under-margining scenario would be exacerbated, and a customer default to the clearing FCM—and potentially a default of the clearing FCM to the DCO—would be more likely. It would also forego applying the benefits of the Margin Adequacy Requirement and specific risk-mitigating requirements for separate account treatment to all FCMs.

D. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the effects of its actions in light of the following five factors:

1. Protection of Market Participants and the Public

Section 15(a)(2)(A) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of considerations of protection of market participants and the public. The Commission preliminarily believes that the amendments proposed herein would strengthen the customer protection and risk mitigation provisions of part 1 applicable to FCMs generally, and, with respect to clearing FCMs, maintain the efficacy of protections for customers and the broader financial system contained in Core Principle D and regulation § 39.13.

The Commission believes that the proposed regulation's Margin Adequacy Requirement will have a salutary effect on the protection of market participants and the public. Section 4d(a)(2) of the CEA and the Commission's implementing regulations under part 1 require FCMs to segregate customer funds to margin trades and prohibit FCMs from using one customer's funds to margin another customer's trades. The proposed regulation is designed to effectuate and support these requirements by implementing requirements for FCMs to limit the potential for losses from defaults and maintain margin sufficient to cover potential exposures in normal market conditions [254] by requiring FCMs to ensure that their customers do not withdraw funds from their accounts if such withdrawal would create or exacerbate an initial margin shortfall, and to do so in a manner consistent with the Margin Adequacy Requirement in regulation § 39.13(g)(8)(iii) already applicable through DCO rules to clearing FCMs. This requirement protects not only market participants by requiring FCMs to ensure that adequate margin exists to cover customer positions; it also protects the public from disruption to the wider financial system by mitigating the risk that an FCM will default due to customer nonpayment of variation margin obligations combined with insufficient initial margin.

The Commission also believes the requirements in the proposed regulation for carrying out separate account treatment will provide for separate account treatment in a manner that protects market participants and the public. While, with respect to clearing FCMs subject to the indirect effects of current § 39.13(g)(8)(iii), permitting separate account treatment unavoidably creates some additional risk of a margin deficiency, the conditions of the no-action position outlined in CFTC Letter No. 19–17, and proposed to be codified herein, as modified and applicable on an FCM-wide basis, are designed to effectuate these customer protection and risk mitigation goals notwithstanding an FCM's application of separate account treatment (and the consequent additional risk). For example, separate account treatment is not permitted in certain circumstances outside the ordinary course of business (*e.g.,* where an FCM learns a customer is in financial distress, and thus may be unable promptly to meet initial margin requirements, whether in one or more separate accounts or on a combined account basis). The proposed regulation would also put in place requirements for FCMs designed to ensure that they collect information sufficient to understand the value of assets dedicated to a separate account, apply separate account treatment consistently, and maintain reliable lines of contact for the ultimate customer of the account. Clearing FCMs have, for over four years, successfully relied on a no-action letter, as applied through their DCOs, establishing conditions substantially similar to the conditions in the proposed rule, and the Commission believes codification of these conditions, as proposed herein, supports protection of market participants and the public.

2. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

Section 15(a)(2)(B) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of efficiency, competitiveness, and financial integrity of futures markets. The Commission preliminarily believes that the proposed regulation may carry potential implications for the financial integrity of markets, but not for the efficiency or competitiveness of markets, which the Commission preliminarily believes remain unchanged.

As stated above, the purposes of the Commission's customer funds protection and risk management regulations include not just protection of customer assets, but also mitigation of systemic risk: a customer in default to an FCM may in turn trigger the FCM to default, either to the DCO (if it is a clearing member) or to another FCM that is itself a clearing member, with cascading consequences for the clearing FCM (if applicable) or the DCO and the wider financial system. The proposed Margin Adequacy Requirement advances those purposes directly. The proposed amendments permitting separate account treatment reflect the Commission's preliminary conclusion that the conditions of CFTC Letter No. 19–17, as proposed to be codified herein, are sufficient and appropriate to guard against such risks for purposes of the proposed Margin Adequacy Requirement.

In CFTC Letter No. 19–17, the Commission staff highlighted market participants' concerns that the Commission should recognize ''diverse practices among FCMs and their customers with respect to the handling of separate accounts of the same beneficial owner'' as consistent with regulation § 39.13(g)(8)(iii). FIA, in particular, outlined several business cases in which a customer may want to apply separate account treatment, and each of SIFMA–AMG, FIA, and CME outlined controls that clearing FCMs could apply to ensure that, in instances in which separate account treatment is desired, such treatment can be applied in a manner that effectively prevents systemic risk.[255] By proposing to codify in part 1 a Margin Adequacy

[254] 7 U.S.C. 7a–1(c)(2)(D)(iii) through (iv).

[255] *See* First FIA Letter; SIFMA–AMG Letter; CME Letter.

Requirement directly applicable to FCMs similar to the Margin Adequacy Requirement of regulation § 39.13(g)(8)(iii), and a modified version of the no-action position provided for by CFTC Letter No. 19–17 and its superseding letters, applicable to all FCMs, the Commission is proposing a framework for FCMs, whether clearing or non-clearing, to provide separate account treatment for customers subject to enhanced customer fund and risk mitigation protections, thereby ensuring FCMs can compete on services offered to customers to address their financial needs, in a manner consistent with the customer protection and risk mitigation goals of the CEA.

3. Price Discovery

Section 15(a)(2)(C) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of price discovery considerations. The Commission preliminarily believes that the proposed amendments will not have a significant impact on price discovery.

4. Sound Risk Management Practices

Section 15(a)(2)(D) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of sound risk management practices. As discussed above, the CEA sets forth requirements providing that an FCM may not use one customer's funds to cover another customer's margin shortfall. The proposed Margin Adequacy Requirement serves these purposes by further ensuring that FCMs do not allow customers to create or increase under-margining in their accounts through withdrawals of funds. While, as discussed above, clearing FCMs are already subject to this requirement as a result of DCO rules adopted under regulation § 39.13(g)(8)(iii), the proposed regulation will also apply this requirement to non-clearing FCMs, and will create another avenue to monitoring and enforcement of this requirement for clearing FCMs.

Additionally, the Commission believes that the proposed regulation will ensure that application of the proposed regime for separate account treatment occurs in a manner that continues to be consistent with the CEA's customer fund protection and risk mitigation objectives. As discussed above, the no-action position has been successfully used to allow clearing FCMs to engage in separate account treatment in a manner that is consistent with the protection of customer funds and the mitigation of systemic risk, including by requiring the application of separate account treatment in a consistent manner, and requiring regulatory notifications and the cessation of separate account treatment in certain instances of operational or financial distress. The Commission preliminarily believes codification of the no-action conditions, and the Margin Adequacy Requirement they address, applied directly to all FCMs, promotes sound FCM risk management practices.[256]

5. Other Public Interest Considerations

Section 15(a)(2)(e) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of other public interest considerations. The Commission is identifying a public interest benefit in codifying the Divisions' no-action position, where the efficacy of that position has been demonstrated. In such a situation, the Commission believes it serves the public interest and, in particular, the interests of market participants, to engage in notice-and-comment rulemaking, where it seeks and considers the views of the public in amending its regulations, rather than for market participants to continue to rely on a time-limited no-action position that can be easily withdrawn, provides less long-term certainty for market participants, and offers a more limited opportunity for public input.

Request for Comment

Question 14: The Commission requests comment, including any available quantifiable data and analysis, concerning its analysis of the Section 15(a) factors.

IV. Related Matters

A. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA in issuing any order or adopting any Commission rule or regulation.[257]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the proposed regulation implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the proposed regulation to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether the proposed regulation is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the proposed regulation is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposed regulation.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis with respect to such impact.[258] The rules proposed herein would require all FCMs to ensure that they do not permit their customers to withdraw funds from their accounts unless the net liquidating value plus the margin deposits remaining in the account are sufficient to meet the customer initial margin requirements for such accounts, but would also establish conditions under which FCMs could engage in separate account treatment. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[259] The Commission has previously determined that FCMs are not small entities for the purpose of the RFA.[260] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these proposed rules will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The PRA [261] imposes certain requirements on Federal agencies in

[256] *See, e.g.,* First FIA Letter (describing use of separate account treatment for hedging purposes).

[257] 7 U.S.C. 19(b).

[258] 5 U.S.C. 601 *et seq.*

[259] Bankruptcy Regulations, 86 FR 19324, 19416 (Apr. 13, 2021) (citing Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982)).

[260] *See id.* (citing New Regulatory Framework for Clearing Organizations, 66 FR 45604, 45609 (Aug. 29, 2001); Customer Margin Rules Relating to Security Futures, 67 FR 53146, 53171 (Aug. 14, 2002)).

[261] 44 U.S.C. 3501 *et seq.*

connection with their conducting or sponsoring any collection of information as defined by the PRA. Any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Office of Management and Budget (OMB) has not yet assigned a control number to the new collection.

This proposed rulemaking would result in a new collection of information within the meaning of the PRA, as discussed below. The Commission therefore is submitting this proposal to OMB for review, in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. If adopted, responses to this collection of information would be required to obtain a benefit. Specifically, FCMs would be required to respond to the collection in order to obtain the benefit of engaging in separate account treatment for purposes of regulation § 1.44.

The Commission will protect proprietary information it may receive according to the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.[262] The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information Provided by Reporting Entities/Persons

The proposed regulation applies directly to FCMs. All FCMs that engage in separate account treatment, both those that are clearing members of DCOs and those that are not, would be subject to certain reporting, disclosure, and recordkeeping requirements to comply with the conditions specified in proposed regulation § 1.44.

While the Commission staff estimates burden hours and costs using current part 1 and regulation § 39.13(g)(8)(iii) as a baseline, the Commission notes that FCMs that are clearing members of DCOs are already effectively subject to the Margin Adequacy Requirement, in order to comply with rules that their DCOs have established in order to in turn comply with the DCO's obligations under regulation § 39.13(g)(8)(iii). Thus, the Commission notes that many clearing FCMs already are subject to the conditions of the no-action position, which are substantially similar to the proposed regulation. For these clearing FCMs, the Commission expects that any additional cost or administrative burden associated with complying with the proposed regulation would be reduced.[263]

a. Reporting Requirements

The proposed regulation contains two reporting requirements that could result in a collection of information from ten or more persons over a 12-month period.

There are currently approximately 61 registered FCMs.[264] The Commission staff estimates that slightly less than half of all FCMs would engage in separate account treatment under the proposed regulation, resulting in approximately 30 respondents.

First, proposed regulation § 1.44(d)(2) provides that, to the extent an FCM elects to treat the separate accounts of a customer as accounts of separate entities pursuant to the terms of proposed regulation § 1.44, the FCM must provide a one-time notification to its DSRO and to the Commission that it will apply such treatment. The Commission staff estimates this would result in a total of one response per respondent on a one-time basis, and that respondents could expend up to $273, based on an hourly rate of $273,[265] to comply with the proposed regulation. This would result in an annual burden of 30 hours and an aggregated cost of $8,190 (30 respondents × $273).

Second, proposed regulation § 1.44(e)(3) requires an FCM engaging in separate account treatment to communicate promptly in writing to its DSRO and to the Commission the occurrence of certain enumerated ''non-ordinary course of business'' events. The Commission staff estimates that each such FCM may experience two non-ordinary course of business events per year, either with respect to themselves, or a customer. For purposes of determining the number of responses, the Commission staff anticipates that additional notifications of substantially the same information, and at substantially the same time, by means of electronic communication to both the DSRO and the Commission would not materially increase the time and cost burden for such FCM. Therefore, for purposes of these estimates, the Commission staff treats a set of notifications sent to the DSRO and to the Commission as a single response.[266] Accordingly, the Commission staff estimates a total of two responses per respondent on an annual basis. In addition, the Commission staff estimates that each response would take eight hours. This yields a total annual burden of 480 hours (2 responses * 8 hours/response * 30 respondents). In addition, the Commission staff estimates that each respondent could expend up to $4,368 annually, based on an hourly rate of $273, to comply with this requirement.[267] This would result in an aggregated cost of $131,040 per annum (30 respondents × $4,368).

The aggregate information collection burden estimate associated with the proposed reporting requirements is as follows: [268]

[262] 7 U.S.C. 12(a)(1).

[263] However, the Commission expects that FCMs that do not currently rely on the no-action position, but choose to apply separate account treatment after (and if) the proposed regulation is finalized, would incur new costs. This would include all non-clearing FCMs that choose to apply separate account treatment after (and if) the proposed regulation is finalized.

[264] *See* CFTC, Selected FCM Financial Data as of August 31, 2023, available at *https://www.cftc.gov/sites/default/files/2023-10/01%20-%20FCM%20webpage%20Update%20-%20August%202023.xlsx.*

[265] This figure is rounded to the nearest dollar and based on the annual mean wage for U.S. Bureau of Labor Statistics (BLS) category 13–2061, ''Financial Examiners.'' BLS, Occupational Employment and Wages, May 2022 [hereinafter ''BLS Data''], available at *https://www.bls.gov/oes/current/oes_nat.htm.* This category consists of professionals who ''[e]nforce or ensure compliance with laws and regulations governing financial and securities institutions and financial and real estate transactions.'' BLS, Occupational Employment and Wages, May 2022: 13–2061 Financial Examiners, available at *https://www.bls.gov/oes/current/oes132061.htm.* According to BLS, the mean salary for this category in the context of Securities, Commodity Contracts, and Other Financial Investments and Related Activities is $117,270. This number is divided by 1,800 work hours in a year to account for sick leave and vacations and multiplied by 4 to account for retirement, health, and other benefits or compensation, as well as for office space, computer equipment support, and human resources support. This number is further multiplied by 1.0494 to account for the 4.94% change in the Consumer Price Index for Urban Wage-Earners and Clerical Workers between May 2022 and September 2023 (288.022 to 302.257). BLS, CPI for Urban Wage Earners and Clerical Workers (CPI–W), U.S. City Average, All Items—CWUR0000SA0, available at *https://www.bls.gov/data/#prices.* Together, these modifications yield an hourly rate of $273. The rounding and modifications applied with respect to the estimated average burden hour cost for this occupational category have been applied with respect to each occupational category discussed as part of this analysis.

[266] The Commission staff applies the same assumption to notifications to DSROs and the Commission with respect to proposed regulation § 1.44(d)(2) and proposed regulation § 1.44(e)(3).

[267] Financial Examiners.

[268] This estimate reflects the aggregate information collection burden estimate associated with the proposed reporting requirements for the first annual period following implementation of the proposed regulation. Because proposed regulation § 1.44(d)(2) would result in a one-time reporting requirement, the Commission staff estimates that for each subsequent annual period, the number of

Estimated number of respondents: 30.
Estimated number of reports: 90.
Estimated annual hours burden: 510.
Estimated annual cost: $139,230.

b. Disclosure Requirements

The proposed regulation contains three disclosure requirements that could affect ten or more persons in a 12-month period.

First, proposed regulation § 1.44(h)(3)(i) requires an FCM to provide each customer using separate accounts with a disclosure that, pursuant to part 190 of the Commission's regulations, all separate accounts of the customer will be combined in the event of the FCM's bankruptcy. The Commission staff estimates that this would result in a total of 125 responses per respondent on a one-time basis, and that respondents are likely to spend one hour to comply with this requirement for a total of 125 annual burden hours and up to $19,500 annually, based on an hourly rate of $156.[269] This would result in an annual burden of 3,750 hours and an aggregated cost of $585,000 (30 respondents × $19,500). This estimate reflects an initial disclosure distributed to existing customers subject to separate account treatment. The Commission staff expects that, on a going forward basis, this disclosure would be included in standard disclosures for new customers, and would therefore not result in any additional costs.

Second, proposed regulation § 1.44(h)(3)(iii) requires that an FCM engaging in separate account treatment include the disclosure statement required by proposed regulation § 1.44(h)(3) on its website or within its Disclosure Document required by regulation § 1.55(i). If the FCM opts to update its Disclosure Document, the Commission staff estimates that this proposed requirement would result in a total of one response on a one-time basis, and that each respondent could expend up to $580 annually, based on an hourly rate of $580,[270] to comply with the proposed regulation. This would result in an estimated 30 burden hours annually and an aggregated cost of $17,400 (30 respondents × $580). This estimate reflects one updated disclosure distributed to existing customers. If the FCM opts to include the disclosure on its website, the Commission staff estimates that this proposed requirement would result in a total of one response on a one-time basis, and that each respondent could expend up to $293 annually, based on an hourly rate of $293, to comply with the proposed regulation.[271] This would result in an estimated 30 burden hours annually and an aggregated cost of $8,790 (30 respondents × $293). The Commission staff expects that once the disclosure is included in the Disclosure Document required by regulation § 1.55(i) or posted on the FCM's website, the FCM would not incur any additional costs.

Third, proposed regulation § 1.44(h)(4) requires an FCM that has made an election pursuant to regulation § 1.44(d) to disclose in the Disclosure Document required under regulation § 1.55(i) that it permits the separate treatment of accounts for the same customer under the terms and conditions of regulation § 1.44. The Commission staff estimates that this would result in a total of one response per respondent on a one-time basis, and that respondents could expend up to $580 annually, based on an hourly rate of $580,[272] to comply with the proposed regulation. This would result in an estimated 30 burden hours annually and an aggregated cost of $17,400 (30 respondents × $580). This estimate reflects an initial updated disclosure distributed to existing customers. The Commission staff expects that once this disclosure is made, the disclosure would be included in the Disclosure Document required by regulation § 1.55(i) going forward, and would not result in any additional costs.

The aggregate information collection burden estimate associated with the proposed disclosure requirements is as follows: [273]

Estimated number of respondents: 30.
Estimated number of reports: 3,840.
Estimated annual hours burden: 3,840.
Estimated annual cost: $628,590.

c. Recordkeeping Requirements

The proposed regulation contains four recordkeeping requirements that could affect ten or more persons in a 12-month period.

First, proposed regulation § 1.44(d)(1) provides that, to elect to treat the separate accounts of a customer as accounts of separate entities, for purposes of the Margin Adequacy Requirement, the FCM shall include the customer on a list of separate account customers maintained in its books and records receiving such treatment. The Commission staff estimates that this would result in a total of 125 responses per respondent on a one-time basis, and that respondents could expend up to $8,531 annually, based on an hourly rate of $273,[274] to comply with the proposed regulation. This would result in an estimated 938 burden hours annually and an aggregated cost of $255,930 per annum (30 respondents × $8,531).

Second, proposed regulation § 1.44(e)(4) provides that an FCM that has ceased permitting disbursements on a separate account basis to a separate account customer due to the occurrence of a non-ordinary course of business event may resume permitting disbursements on a separate account basis if the FCM reasonably believes, based on new information, that the circumstances leading to cessation of separate account treatment have been cured, and the FCM documents in writing the factual basis and rationale for its conclusion that such circumstances have been cured. Where the Commission staff have estimated above that an FCM may experience two non-ordinary course of business events per year, the Commission staff conservatively estimate that in each case the conditions leading to cessation of separate account treatment would be cured. Accordingly, the Commission staff estimates that documenting the cure of each non-ordinary course of business event would require two recordkeeping responses per respondent on an annual basis, and that

reports, burden hours, and burden cost would be reduced accordingly.

[269] This figure is based on the annual mean wage of $67,070 for BLS category 43–6012, ''Legal Secretaries & Administrative Assistants'' in the New York City Metropolitan Area, one of the top paying metropolitan areas for this category. BLS Data. *https://www.bls.gov/oes/current/oes436012.htm.*

[270] BLS 2022 Data for BLS Category 23–1011, ''Lawyers,'' in Securities, Commodity Contracts, and Other Financial Investments and Related Activities, *https://data.bls.gov/oes/#/indOcc/Multiple%20occupations%20for%20one%20industry* (mean annual salary of $248,830).

[271] This figure is based on the annual mean wage for BLS category 15–1254, ''Web Developers.'' According to BLS, the mean salary for this category in the context of Securities, Commodity Contracts, and Other Financial Investments and Related Activities is $125,760.

[272] Lawyers.

[273] For purposes of this analysis, the Commission staff calculates the aggregate information collection burden assuming that respondents choose to include the disclosure statement required by proposed regulation § 1.44(h)(3) on their websites *and* within their Disclosure Document required by proposed regulation § 1.55(i), in order to comply with proposed regulation § 1.44(h)(3)(iii). Additionally, this estimate reflects the aggregate information collection burden estimate associated with the proposed disclosure requirements for the first annual period following implementation of the proposed regulation. Because each of proposed regulation § 1.44(h)(3)(i), § 1.44(h)(3)(iii), and § 1.44(h)(4) would result in a one-time disclosure requirement for PRA purposes, the Commission staff estimates that for each subsequent annual period the number of respondents, reports, burden hours, and burden cost would be reduced accordingly.

[274] Financial Examiners.

respondents could expend up to $1,092 annually, based on an hourly rate of $273,[275] to comply with this requirement. This would result in an aggregated cost of $32,760 per annum (30 respondents × $1,092).

Third, proposed regulation § 1.44(h)(2) provides that where a separate accounts customer has appointed a third-party as the primary contact to the FCM, the FCM must obtain and maintain current contact information of an authorized representative(s) at the customer and take reasonable steps to verify that such contact information is and remains accurate and that such person is in fact an authorized representative of the customer. The Commission staff estimates this would result in a total of 125 responses per respondent on an annual basis,[276] and that respondents could expend up to $19,500 annually, based on an hourly rate of $156.[277] This would result in an estimated 3,750 burden hours annually and an aggregated cost of $585,000 per annum (30 respondents × $19,500).

Fourth, proposed regulation § 1.44(h)(3)(ii) requires that an FCM maintain documentation demonstrating that the part 190 disclosure statement required by proposed regulation § 1.44(h)(3)(i) was delivered directly to the customer. The Commission staff estimates that this would result in a total of 125 responses per respondent on a one-time basis, and that respondents could expend up to $1,950 annually, based on an hourly rate of $156, to comply with the proposed regulation. This would result in an estimated 375 burden hours annually and an aggregated cost of $58,500 (30 respondents × $1,950). This estimate reflects initial recordkeeping of documentation that the disclosure was delivered to existing customers subject to separate account treatment. The Commission staff estimates that, once such recordkeeping is complete, the recordkeeping required by proposed regulation § 1.44(h)(3)(ii) would be required only with respect to new customers who receive disclosures pursuant to proposed regulation § 1.44(h)(3)(ii), and the costs and burden hours associated with proposed regulation § 1.44(h)(3)(ii) would be reduced accordingly.[278]

The Commission notes that while certain other provisions of the proposed regulation may result in recordkeeping requirements, the Commission anticipates that any burden associated with these requirements is likely to be *de minimis* and therefore does not expect these provisions to increase the recordkeeping burden for FCMs.

The aggregate information collection burden estimate associated with the proposed reporting requirements is as follows:

Estimated number of respondents: 30.

Estimated number of reports: 11,310.

Estimated annual hours burden: 5,183.

Estimated annual cost: $932,190.

2. Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission will consider public comments on this proposed collection of information regarding:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;
- Enhancing the quality, utility, and clarity of the information proposed to be collected; and
- Reducing the burden of the proposed information collection requirements on registered entities, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques; *e.g.,* permitting electronic submission of responses.

Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;
- (202) 395–6566 (fax); or
- *OIRAsubmissions@omb.eop.gov* (email).

Please provide the Commission with a copy of submitted comments so that, if the Commission determines to promulgate a final rule, all such comments can be summarized and addressed in the final rule preamble. Refer to the **ADDRESSES** section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting *RegInfo.gov.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of receiving full consideration if OMB receives it within 30 days of publication of this notice of proposed rulemaking. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rules.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 22

Brokers, Clearing, Consumer protection, Reporting and recordkeeping, Swaps.

17 CFR Part 30

Consumer protection.

17 CFR Part 39

Clearing, Clearing organizations, Commodity futures, Consumer protection.

[275] Financial Examiners.

[276] FIA stated that while the costs incurred by each FCM to comply with the conditions of CFTC Letter No. 19–17 varies depending on customer base, among larger FCMs with a significant institutional customer base, personnel costs would have included identifying and reviewing up to 3,000 customer agreements to determine which agreements required modification, and then negotiating amendments with customers or their advisors. The Commission staff estimates, based on the 30 largest FCMs by customer assets in segregation as of the Commission's FCM financial data report for May 31, 2022, that there are 3,750 customers of FCMs whose accounts could be in scope for the proposed regulation, with an average of 125 customers per FCM.

[277] This figure is based on the annual mean wage of $67,070 for BLS category 43–6012, ''Legal Secretaries & Administrative Assistants'' in the New York City Metropolitan Area, one of the top paying metropolitan areas for this category. BLS Data, available at *https://www.bls.gov/oes/current/oes436012.htm.*

[278] This estimate reflects the aggregate information collection burden estimates associated with the proposed disclosure requirements for the first annual period following implementation of the proposed regulation. Because, as noted above, proposed regulation § 1.44(h)(3)(i) would result in a one-time recordkeeping requirement as to each customer (*i.e.,* once the disclosure is provided to existing customers, it would need to be provided only to new customers on a going forward basis), the Commission staff estimates that for each subsequent annual period the number of reports, burden hours, and burden cost would be reduced accordingly.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (2012).

■ 2. Amend § 1.3 by revising the definition of ''business day'' to read as follows:

§ 1.3 Definitions.

* * * * *

Business day. This term means any day other than a Saturday, Sunday, or holiday. In all notices required by the Act or by the rules and regulations in this chapter to be given in terms of business days the rule for computing time shall be to exclude the day on which notice is given and include the day on which shall take place the act of which notice is given.

* * * * *

■ 3. Amend § 1.17 by:
■ a. Republishing the paragraph heading of paragraph (b);
■ b. Revising paragraph (b)(6);
■ c. Revising introductory text of paragraph (b)(8);
■ d. Adding new paragraph (b)(8)(v);
■ e. Republishing the paragraph heading of paragraph (c);
■ f. Republishing the paragraph heading of paragraph (c)(2);
■ g. Revising paragraph (c)(2)(i);
■ h. Republishing the paragraph heading of paragraph (c)(4);
■ i. Revising paragraph (c)(4)(ii);
■ j. Republishing the paragraph heading of (c)(5); and
■ k. Revising paragraph (c)(5)(viii).

The republications, revisions, and additions read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(b) For the purposes of this section:

* * * * *

(6) *Business day* means any day other than a Saturday, Sunday, or holiday.

* * * * *

(8) *Risk margin* for an account means the level of maintenance margin or performance bond required for the customer -and noncustomer positions by the applicable exchanges or clearing organizations, and, where margin or performance bond is required only for accounts at the clearing organization, for purposes of the futures commission merchant's risk-based capital calculations applying the same margin or performance bond requirements to customer and noncustomer positions in accounts carried by the futures commission merchant, subject to the following.

* * * * *

(v) If a futures commission merchant carries separate accounts for separate account customers pursuant to § 1.44 of this part, the futures commission merchant shall calculate the risk margin pursuant to this section as if the separate accounts are owned by separate entities.

* * * * *

(c) Definitions: For the purposes of this section:

* * * * *

(2) The term *current assets* means cash and other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold during the next 12 months. ''Current assets'' shall:

(i) Exclude any unsecured commodity futures, options, cleared swaps, or other Commission regulated account containing a ledger balance and open trades, the combination of which liquidates to a deficit or containing a debit ledger balance only. For purposes of this paragraph (c)(2)(i), a futures commission merchant that carries separate accounts for separate account customers pursuant to § 1.44 of this part shall treat each separate account as if it is the account of a separate entity, apply only margin collateral held for the particular separate account in determining if the deficit or debit ledger balance is secured, and exclude from current assets a separate account that liquidates to a deficit or contains a debit ledger balance only. Provided, however, that any deficit or debit ledger balance in an account listed above, including a separate account, which is the subject of a call for margin or other required deposits may be included in current assets until the close of business on the business day following the date on which such deficit or debit ledger balance originated provided that the account had timely satisfied, through the deposit of new funds, the previous day's deficit or debit ledger balance, if any, in its entirety. If a separate account does not meet a previous day's margin call for a deficit or debit balance, the futures commission merchant shall exclude all separate accounts of that separate account customer carried by the futures commission merchant that have a deficit or debit ledger balance from current assets under this paragraph.

* * * * *

(4) The term *liabilities* means the total money liabilities of an applicant or registrant arising in connection with any transaction whatsoever, including economic obligations of an applicant or registrant that are recognized and measured in conformity with generally accepted accounting principles. ''Liabilities'' also include certain deferred credits that are not obligations but that are recognized and measured in conformity with generally accepted accounting principles. For the purposes of computing ''net capital,'' the term ''liabilities'':

* * * * *

(ii) Excludes, in the case of a futures commission merchant, the amount of money, securities and property due to customers which is held in segregated accounts in compliance with the requirements of the Act and these regulations. For purposes of this paragraph (c)(4)(ii), a futures commission merchant that carries separate accounts of a separate account customer pursuant to § 1.44 of this part shall compute the amount of money, securities and property due to the separate account customer as if the separate accounts were accounts of separate entities. A futures commission merchant may exclude money, securities and property due to customers, including separate account customers, only if such money, securities and property held in segregated accounts have been excluded from current assets in computing net capital;

* * * * *

(5) The term *adjusted net capital* means net capital less:

* * * * *

(viii) (A) In the case of a futures commission merchant, for undermargined customer accounts, the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade, or if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin or other required deposits which are outstanding no more than one business day. If there are no such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary, after application of calls for margin or other required

deposits outstanding no more than one business day, to restore original margin when the original margin has been depleted by 50 percent or more. If, however, a call for margin or other required deposits for an undermargined customer account is outstanding for more than one business day, then no such call for that undermargined customer account shall be applied until all such calls for margin have been met in full.

(B) If a futures commission merchant carries separate accounts for one or more separate account customers pursuant to § 1.44 of this part, the futures commission merchant shall compute the amount of funds required under paragraph (c)(5)(viii)(A) of this section to meet maintenance margin requirements for each separate account as if the account is owned by a separate entity, after application of calls for margin or other required deposits which are outstanding no more than one business day. If, however, a call for margin or other required deposits for any separate account of a particular separate account customer is outstanding for more than one business day, then all outstanding margin calls for all separate accounts of that separate account customer shall be treated as if the margin calls are outstanding for more than one business day, and shall be deducted from net capital until all such calls have been met in full.

(C) If a customer account or a customer separate account deficit or debit ledger balance is excluded from current assets in accordance with paragraph (c)(2)(i) of this section, such deficit or debit ledger balance amount shall not also be deducted from current assets under this paragraph (c)(5)(viii) of this section.

(D) In the event that an owner of a customer account, or a customer separate account pursuant to § 1.44 of this part, has deposited an asset other than cash to margin, guarantee or secure the account, the value attributable to such asset for purposes of this paragraph (c)(5)(viii) of this section shall be the lesser of:

(*1*) The value attributable to the asset pursuant to the margin rules of the applicable board of trade, or

(*2*) The market value of the asset after application of the percentage deductions specified in paragraph (c)(5) of this section;

* * * * *

■ 4. Amend § 1.20 by revising paragraph (i)(4) and adding new paragraph (i)(5) to read as follows:

§ 1.20 Futures customer funds to be segregated and separately accounted for.

* * * * *

(i) * * *

(4) The futures commission merchant must, at all times, maintain in segregation an amount equal to the sum of any credit and debit balances that the futures customers of the futures commission merchant have in their accounts. Notwithstanding the above, a futures commission merchant must add back to the total amount of funds required to be maintained in segregation any futures customer accounts with debit balances in the amounts calculated in accordance with paragraph (5) of this section.

(5) The futures commission merchant, in calculating the total amount of funds required to be maintained in segregation pursuant to paragraph (i)(4) of this section, must include any debit balance, as calculated pursuant to this paragraph (i)(5), that a futures customer has in its account, to the extent that such debit balance is not secured by ''readily marketable securities'' that the particular futures customer deposited with the futures commission merchant.

(i) For purposes of calculating the amount of a futures account's debit balance that the futures commission merchant is required to include in its calculation of its total segregation requirement pursuant to this paragraph (i)(5), the futures commission merchant shall calculate the net liquidating equity of each futures account in accordance with paragraph (i)(2) of this section, except that the futures commission merchant shall exclude from the calculation any noncash collateral held in the futures customer account as margin collateral. The futures commission merchant may offset the debit balance computed under this paragraph (i)(5) to the extent of any ''readily marketable securities,'' subject to percentage deductions (*i.e.,* ''securities haircuts'') as specified in paragraph (f)(5)(iv) of this section, held for the particular futures customer to secure its debit balance.

(ii) For purposes of this section, ''readily marketable'' shall be defined as having a ''ready market'' as such latter term is defined in Rule 15c3–1(c)(11) of the Securities and Exchange Commission (§ 241.15c3–1(c)(11) of this title).

(iii) In order for a debit balance to be deemed secured by ''readily marketable securities,'' the futures commission merchant must maintain a security interest in such securities, and must hold a written authorization to liquidate the securities at the discretion of the futures commission merchant.

(iv) To determine the amount of such debit balance secured by ''readily marketable securities,'' the futures commission merchant shall:

(A) Determine the market value of such securities; and

(B) Reduce such market value by applicable percentage deductions (*i.e.,* ''securities haircuts'') as set forth in Rule 15c3–1(c)(2)(vi) of the Securities and Exchange Commission (§ 240.15c3–1(c)(2)(vi) of this title). Futures commission merchants that establish and enforce written policies and procedures to assess the credit risk of commercial paper, convertible debt instruments, or nonconvertible debt instruments in accordance with Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (§ 240.15c3–1(c)(2)(vi) of this title) may apply the lower haircut percentages specified in Rule 240.15c3–1(c)(2)(vi) for such commercial paper, convertible debt instruments and nonconvertible debt instruments.

* * * * *

■ 5. Amend § 1.32 by adding new paragraph (l) to read as follows:

§ 1.32 Reporting of segregated account computation and details regarding the holding of futures customer funds.

* * * * *

(l) A futures commission merchant that carries futures accounts for futures customers as separate accounts for separate account customers pursuant to § 1.44 of this part shall:

(i) Calculate the total amount of futures customer funds on deposit in segregated accounts carried as separate accounts of separate account customers on behalf of such futures customers pursuant to paragraph (a)(1) of this section and the total amount of futures customer funds required to be on deposit in segregated accounts carried as separate accounts of separate account customers on behalf of such futures customers pursuant to paragraph (a)(2) of this section by including the separate accounts of the separate account customers as if the separate accounts were accounts of separate entities;

(ii) Offset a net deficit in a particular futures account carried as a separate account of a separate account customer in accordance with paragraph (b) of this section against the current market value of readily marketable securities held only for the particular separate account of such separate account customer; and

(iii) Document its segregation computation in the Statement of Segregation Requirements and Funds in Segregation of Customers Trading on U.S. Commodity Exchanges required by paragraph (c) of this section by

incorporating and reflecting the futures accounts carried as separate accounts of separate account customers as accounts of separate entities.

■ 6. Add § 1.44 to read as follows:

§ 1.44 Margin Adequacy and Treatment of Separate Accounts.

(a) *Definitions.* These following definitions apply only for purposes of this section, except to the extent explicitly noted:

Account means a futures account as defined in § 1.3 of this part, a Cleared Swaps Customer Account as defined in § 1.3 of this part, or, a 30.7 account as defined in § 30.1 of this chapter.

Business day has the meaning set forth in § 1.3 of this part, with the clarification that ''holiday'' has the meaning defined in paragraph (a) of this section.

Holiday means Federal holidays as established by 5 U.S.C. 6103.

One business day margin call means a margin call that is issued and met in accordance with the requirements of paragraph (f) of this section.

Ordinary course of business means the standard day-to-day operation of the futures commission merchant's business relationship with its separate account customer. Events specified in paragraph (e) of this section are inconsistent with the ordinary course of business.

Separate account means any one of multiple accounts of the same separate account customer that are carried by the same futures commission merchant.

Separate account customer means a customer for which the futures commission merchant has made the election set forth in paragraph (d) of this section.

Undermargined amount for an account means the amount, if any, by which the customer margin requirements with respect to all products held in that account exceeds the net liquidating value plus the margin deposits currently remaining in that account. For purposes of this definition, ''margin requirements'' shall mean the level of maintenance margin or performance bond (including, as appropriate, the equity component or premium for long or short option positions) required for the positions in the account by the applicable exchanges or clearing organizations. With respect to positions for which maintenance margin is not specified, ''margin requirements'' shall refer to the clearing organization margin requirements applicable to such positions.

(b) *Ensuring adequacy of customer initial margin.*

(1) A futures commission merchant shall ensure that a customer does not withdraw funds from its accounts with such futures commission merchant unless the net liquidating value (calculated as of the close of business on the previous business day) plus the margin deposits remaining in the customer's account after such withdrawal are sufficient to meet the customer initial margin requirements with respect to all products held in such customer's account, except as provided in paragraph (c) of this section.

(2) For the purposes of paragraph (1) above, where the previous day (excluding Saturdays and Sundays) is a holiday, as defined in § 1.44(a) of this chapter, where any designated contract market on which the futures commission merchant trades is open for trading, and where an account of any of the futures commission merchant's customers includes positions traded on such a market, the net liquidating value for such an account should instead be calculated as of the close of business on such holiday.

(c) *Separate account treatment with respect to withdrawal of customer initial margin.* A futures commission merchant may, only during the ''ordinary course of business'' as that term is defined in this section, treat the separate accounts of a separate account customer as accounts of separate entities for purposes of paragraph (b) of this section if such futures commission merchant elects to do so as specified in paragraph (d) of this section. A futures commission merchant that has made such an election shall comply with the requirements set forth in this section, and maintain written internal controls and procedures designed to ensure such compliance.

(d) *Election to treat a customer's accounts as separate accounts.*

(1) To elect to treat the separate accounts of a customer as accounts of separate entities for purposes of paragraph (b) of this section, the futures commission merchant shall include the customer on a list of separate account customers maintained in its books and records. This list shall include the identity of each separate account customer, identify each separate account of such customer, and be kept current.

(2) The first time that the futures commission merchant includes a customer on the list of separate account customers, it shall, within one business day, provide notification of the election to allow separate account treatment for customers to its designated self-regulatory organization and to the Commission. The notice shall be provided in accordance with the process specified in paragraph 1.12(n)(3) of this part.

(e) *Events inconsistent with the ordinary course of business.*

(1) The following events are inconsistent with the ordinary course of business with respect to the separate accounts of a particular separate account customer, and the occurrence of any such event would require the futures commission merchant to cease permitting disbursements on a separate account basis with respect to all accounts of the relevant separate account customer:

(i) The separate account customer, including any separate account of such customer, fails to deposit initial margin or maintain maintenance margin or make payment of variation margin or option premium as specified in paragraph (f) of this section.

(ii) The occurrence and declaration by the futures commission merchant of an event of default as defined in the account documentation executed between the futures commission merchant and the separate account customer.

(iii) A good faith determination by the futures commission merchant's chief compliance officer, one of its senior risk managers, or other senior manager, following such futures commission merchant's own internal escalation procedures, that the separate account customer is in financial distress, or there is significant and bona fide risk that the separate account customer will be unable promptly to perform its financial obligations to the futures commission merchant, whether due to operational reasons or otherwise.

(iv) The insolvency or bankruptcy of the separate account customer or a parent company of such customer.

(v) The futures commission merchant receives notification that a board of trade, a derivatives clearing organization, a self-regulatory organization as defined in § 1.3 of this part or § 3(a)(26) of the Securities Exchange Act of 1934, the Commission, or another regulator with jurisdiction over the separate account customer, has initiated an action with respect to such customer based on an allegation that the customer is in financial distress.

(vi) The futures commission merchant is directed to cease permitting disbursements on a separate account basis, with respect to the separate account customer, by a board of trade, a derivatives clearing organization, a self-regulatory organization, the Commission, or another regulator with jurisdiction over the futures commission merchant, pursuant to, as applicable, board of trade, derivatives clearing

organization or self-regulatory organization rules, government regulations, or law.

(2) The following events are inconsistent with the ordinary course of business with respect to the separate accounts of all separate account customers of the futures commission merchant, and the occurrence of any such event would require the futures commission merchant to cease permitting disbursements on a separate account basis with respect to any of its customers:

(i) The futures commission merchant is notified by a board of trade, a derivatives clearing organization, a self-regulatory organization, the Commission, or another regulator with jurisdiction over the futures commission merchant, that the board of trade, the derivatives clearing organization, the self-regulatory organization, the Commission, or other regulator, as applicable, believes the futures commission merchant is in financial or other distress.

(ii) The futures commission merchant is under financial or other distress as determined in good faith by its chief compliance officer, senior risk managers, or other senior management.

(iii) The insolvency or bankruptcy of the futures commission merchant or a parent company of the futures commission merchant.

(3) The futures commission merchant must provide notice to its designated self-regulatory organization and to the Commission of the occurrence of any of the events enumerated in paragraphs (e)(1) or (e)(2) of this section. The notice must identify the event and (if applicable) the customer, and be provided promptly in writing, and in any case no later than the next business day following the date on which the futures commission merchant identifies or has been informed that such event has occurred. Such notice must be provided in accordance with the process specified in paragraph 1.12(n)(3) of this part.

(4) A futures commission merchant that has ceased permitting disbursements on a separate account basis to a separate account customer due to the occurrence of any of the events enumerated in paragraph (e)(1) of this section with respect to a specific separate account customer (or in paragraph (e)(2) with respect to all of its separate account customers) may resume permitting disbursements on a separate account basis to that customer (or, respectively, all customers) if such futures commission merchant reasonably believes, based on new information, that those circumstances have been cured, and such futures commission merchant documents in writing the factual basis and rationale for that conclusion. If the circumstances triggering cessation of separate account treatment were an action or direction by one of the entities described in paragraphs (e)(1)(v) or (vi), or paragraph (e)(2)(i), of this section, then the cure of those circumstances would require the withdrawal or other appropriate termination of such action or direction by that entity.

(f) *Requirements: One business day margin call.* Each separate account must be on a one business day margin call. The following provisions apply solely for purposes of this paragraph (f):

(1) Except as explicitly provided in this paragraph (f), if, as a result of market movements or changes in positions on the previous business day, a separate account is undermargined (*i.e.,* the undermargined amount for that account is greater than zero), the futures commission merchant shall issue a margin call for the separate account for at least the amount necessary for the separate account to meet the initial margin required by the applicable exchanges or clearing organizations (including, as appropriate, the equity component or premium for long or short option positions) for the positions in the separate account, and that call must be met by the applicable separate account customer no later than the close of the Fedwire Funds Service on the same business day.

(2) Payment of margin in currencies listed in Appendix A to this part shall be considered in compliance with the requirements of this paragraph (f) if received by the applicable futures commission merchant no later than the end of the second business day after the day on which the margin call is issued.

(3) Payment of margin in fiat currencies other than U.S. Dollars, Canadian Dollars, or currencies listed in Appendix A to this part shall be considered in compliance with the requirements of this paragraph (f) if received by the applicable futures commission merchant no later than the end of the business day after the day on which the margin call is issued.

(4) The relevant deadline for payment of margin in fiat currencies other than U.S. Dollars may be extended by up to one additional business day and still be considered in compliance with the requirements of this paragraph (f) if payment is delayed due to a banking holiday in the jurisdiction of issue of the currency. For payments in Euro, either the separate account customer or the investment manager managing the separate account may designate one country within the Eurozone that they have the most significant contacts with for purposes of meeting margin calls in that separate account, whose banking holidays shall be referred to for this purpose.

(5) A failure with respect to a specific separate account to deposit, maintain, or pay margin or option premium that was called pursuant to paragraph (f)(1) of this section, due to unusual administrative error or operational constraints that a separate account customer or investment manager acting diligently and in good faith could not have reasonably foreseen, does not constitute a failure to comply with the requirements of this paragraph (f). For these purposes, a futures commission merchant's determination that the failure to deposit, maintain, or pay margin or option premium is due to such administrative error or operational constraints must be based on the futures commission merchant's reasonable belief in light of information known to the futures commission merchant at the time the futures commission merchant learns of the relevant administrative error or operational constraint.

(6) A futures commission merchant would not be in compliance with the requirements of this paragraph (f) if it contractually agrees to provide separate account customers with periods of time to meet margin calls that extend beyond the time periods specified in paragraph (f)(1) through (5) of this section, or engages in practices that are designed to circumvent this paragraph (f).

(7) In the case of a holiday where any designated contract market on which the futures commission merchant trades is open for trading, and where a separate account of any of the futures commission merchant's separate account customers includes positions traded on such a market, then for any such separate account:

(i) If, as a result of market movements or changes in positions on the business day before the holiday, a separate account is undermargined, the futures commission merchant shall issue a margin call for the separate account for at least the undermargined amount, and that call must be met by the applicable separate account customer no later than the close of the Fedwire Funds Service on the next business day after the holiday, and,

(ii) If, as a result of market movements or changes in positions on the holiday, a separate account is undermargined by an amount greater than the amount it was undermargined as a result of market movements or changes in positions on the business day before the holiday, the futures commission merchant shall

issue a margin call for the separate account for at least the incremental undermargined amount, and that call must be met by the applicable separate account customer no later than the close of the Fedwire Funds Service on the next business day after the holiday.

(8) Any person may submit to the Commission any currency that such person proposes should be added to or removed from Appendix A to this part.

(i) A submission pursuant to this paragraph (f)(8) shall include:

(A) A statement that margin payments in the relevant currency cannot, in the case of a proposed addition, or can, in the case of a proposed removal, practicably be received by the futures commission merchant issuing a margin call no later than the end of the first business day after the day on which the margin call is issued;

(B) Documentation or other information sufficient to support the statement contemplated by paragraph (f)(8)(i)(A) of this section; and

(C) Any additional information specifically requested by the Commission.

(ii) A submitter pursuant to paragraph (f)(8)(i) of this section that wishes to request confidential treatment for portions of its submission may do so in accordance with the procedures set out in § 145.9(d) of this chapter.

(iii) The Commission shall review a submission made pursuant to paragraph (f)(8) of this section and determine whether to propose to add the relevant currency to, or remove the relevant currency from, Appendix A to this part.

(iv) If the Commission proposes to add a currency to or remove a currency from Appendix A to this part, the Commission shall issue such determination through notice and comment rulemaking, and shall provide a public comment period of no less than thirty days.

(v) The Commission may, of its own accord and absent a submission pursuant to paragraph (f)(8) of this section, propose to issue a determination to add a currency to or remove a currency from Appendix A to this part pursuant to the procedure set forth in paragraph (f)(8)(iv) of this section.

(g) *Requirements: Calculations for capital, risk management, and segregation.*

(1) The futures commission merchant's internal risk management policies and procedures shall provide for stress testing and credit limits as set forth in § 1.73 of this part for separate account customers. Such stress testing must be performed, and the credit limits must be applied, both on an individual separate account and on a combined account basis.

(2) A futures commission merchant shall calculate the margin requirement for each separate account of a separate account customer independently from such margin requirement for all other separate accounts of the same customer with no offsets or spreads recognized across the separate accounts.

(3) A futures commission merchant shall, in computing its adjusted net capital for purposes of § 1.17 of this part, record each separate account of a separate account customer in the books and records of the futures commission merchant as a distinct account of a customer. This includes recording each separate account with a net debit balance or a deficit as a receivable from the separate account customer, with no offsets between the other separate accounts of the same separate account customer.

(4) A futures commission merchant shall, in calculating the amount of its own funds it is required to maintain in segregated accounts to cover deficits or debit ledger balances pursuant to §§ 1.20(i), 22.2(f), or 30.7(f)(2) of this chapter in any futures customer accounts, Cleared Swaps Customer Accounts, or 30.7 accounts, respectively, include any deficits or debit ledger balances of any separate accounts as if the accounts are accounts of separate entities.

(5) For purposes of its residual interest and legally segregated operationally commingled compliance calculations, as applicable under §§ 1.22(c), 22.2(f)(6), and 30.7(f)(1)(ii) of this chapter, a futures commission merchant shall treat the separate accounts of a separate account customer as if the accounts were accounts of separate entities and include the undermargined amount of each separate account, and cover such undermargined amount with its own funds.

(6) In determining its residual interest target for purposes of §§ 1.11(e)(3)(i)(D) and 1.23(c) of this part, the futures commission merchant must consider the impact of calculating customer receivables for separate account customers on a separate account basis.

(h) *Requirements: information and disclosures.*

(1) A futures commission merchant shall obtain from each separate account customer or, as applicable, the manager of a separate account, information sufficient for the futures commission merchant to:

(i) Assess the value of the assets dedicated to such separate account; and

(ii) Identify the direct or indirect parent company of the separate account customer, as applicable, if such customer has a direct or indirect parent company.

(2) Where a separate account customer has appointed a third-party as the primary contact to the futures commission merchant, the futures commission merchant must obtain and maintain current contact information of an authorized representative at the customer, and take reasonable steps to verify that such contact information is and remains accurate, and that the person is in fact an authorized representative of the customer.

(3) A futures commission merchant must provide each separate account customer a disclosure that, pursuant to part 190 of the Commission's regulations, all separate accounts of the customer in each account class will be combined in the event of the futures commission merchant's bankruptcy.

(i) The disclosure statement required by this paragraph (h)(3) must be delivered directly to the customer via electronic means, in writing or in such other manner as the futures commission merchant customarily delivers disclosures pursuant to applicable Commission regulations, and as permissible under the futures commission merchant's customer documentation.

(ii) The futures commission merchant must maintain documentation demonstrating that the disclosure statement required by this paragraph (h)(3) was delivered directly to the customer.

(iii) The futures commission merchant must include the disclosure statement required by this paragraph (h)(3) on its website or within its Disclosure Document required by paragraph 1.55(i) of this chapter.

(4) A futures commission merchant that has made an election pursuant to paragraph (d) of this section shall disclose in the Disclosure Document required under paragraph 1.55(i) of this part that it permits the separate treatment of accounts for the same customer under the terms and conditions of this § 1.44 and that, in the event that separate account treatment for some customers were to contribute to a loss that exceeds the futures commission merchant's ability to cover, that loss may affect the segregated funds of all of the futures commission merchant's customers in one or more account classes.

(i) A futures commission merchant that applies separate account treatment pursuant to this section shall apply such treatment in a consistent manner over time. If the election pursuant to paragraph (d) of this section for a

separate account customer is revoked, it may not be reinstated during the 30 days following such revocation.

■ 7. Amend § 1.58 by revising paragraphs (a) and (b) and adding new paragraph (c) as follows:

§ 1.58 Gross collection of exchange-set margins.

(a) Each futures commission merchant which carries a futures, options on futures, or Cleared Swaps position for another futures commission merchant or for a foreign broker on an omnibus basis must collect, and each futures commission merchant and foreign broker for which an omnibus account is being carried must deposit, initial and maintenance margin on each position so carried at a level no less than that established for customer accounts by the rules of the applicable contract market or other board of trade. If the contract market or other board of trade does not specify any such margin level, the level required will be that specified by the relevant clearing organization.

(b) If the futures commission merchant which carries a futures, options on futures, or Cleared Swaps position for another futures commission merchant or for a foreign broker on an omnibus basis allows a position to be margined as a spread position or as a hedged position in accordance with the rules of the applicable contract market, the carrying futures commission merchant must obtain and retain a written representation from the futures commission merchant or from the foreign broker for which the omnibus account is being carried that each such position is entitled to be so margined.

(c) Where a futures commission merchant has established an omnibus account that is carried by another futures commission merchant, and the depositing futures commission merchant has elected to treat the separate accounts of a futures customer or a Cleared Swaps Customer as accounts of separate entities for purposes of § 1.44 of this part, the depositing futures commission merchant shall calculate the required initial and maintenance margin for purposes of paragraph (a) of this section separately for each such separate account.

■ 8. Amend § 1.73 by adding new paragraph (c) as follows:

§ 1.73 Clearing futures commission merchant risk management.

* * * * *

(c) A futures commission merchant that is not a clearing member of a derivatives clearing organization, but that treats the separate accounts of a customer as accounts of separate entities for purposes of § 1.44 of this part, shall comply with paragraphs (a) and (b) of this section with respect to the accounts and separate accounts of separate account customers as if it was a clearing member of a derivatives clearing organization.

■ 9. Add new Appendix A to Part 1 to read as follows:

Appendix A to Part 1—Treatment of Certain Foreign Currencies for Margin Adequacy Requirements under Regulation 1.44

Payment of margin in currencies listed in Table 1 of this Appendix A shall be considered in compliance with the requirements of Regulation 1.44(f) of Part 1 of the Commission's regulations if received by the applicable futures commission merchant no later than the end of the second business day after the day on which the margin call is issued.

TABLE 1 TO APPENDIX A

Currency
Australian dollar (AUD)
Chinese renminbi (CNY)
Hong Kong dollar (HKD)
Hungarian forint (HUF)
Israeli new shekel (ILS)
Japanese yen (JPY)
New Zealand dollar (NZD)
Singapore dollar (SGD)
South African rand (ZAR)
Turkish lira (TRY)

PART 22—CLEARED SWAPS

■ 10. The authority citation for part 22 continues to read as follows:

Authority: 7 U.S.C. 1a, 6d, 7a–1 as amended by Pub. L. 111–203, 124 Stat 1376.

■ 11. Amend § 22.2 by:

■ a. Republishing the paragraph heading of paragraph (f);

■ b. Revising paragraphs (f)(4) and (5);

■ c. Republishing the paragraph heading of paragraph (g); and

■ d. Adding new paragraph (g)(11).

The republications, revisions, and additions read as follows:

§ 22.2 Futures Commission Merchants: Treatment of Cleared Swaps and Associated Cleared Swaps Customer Collateral.

* * * * *

(f) Requirement as to amount.

* * * * *

(4) The futures commission merchant must, at all times, maintain in segregation, in its FCM Physical Locations and/or its Cleared Swaps Customer Accounts at Permitted Depositories, an amount equal to the sum of any credit and debit balances that the Cleared Swaps Customers of the futures commission merchant have in their accounts. Notwithstanding the above, a futures commission merchant must add back to the total amount of funds required to be maintained in segregation any Cleared Swaps Customer Accounts with debit balances in the amounts calculated in accordance with paragraph (5) of this section.

(5) The futures commission merchant, in calculating the total amount of funds required to be maintained in segregation pursuant to paragraph (f)(4) of this section, must include any debit balance, as calculated pursuant to this paragraph (f)(5), that a Cleared Swaps Customer has in its account, to the extent that such debit balance is not secured by ''readily marketable securities'' that the particular Cleared Swaps Customer deposited with the futures commission merchant.

(i) For purposes of calculating the amount of a Cleared Swaps Customer Account's debit balance that the futures commission merchant is required to include in its calculation of its total segregation requirement pursuant to this paragraph (f)(5), the futures commission merchant shall calculate the net liquidating equity of each Cleared Swaps Customer Account in accordance with paragraph (f)(2) of this section, except that the futures commission merchant shall exclude from the calculation any noncash collateral held in the Cleared Swaps Customer Account as margin collateral. The futures commission merchant may offset the debit balance computed under this paragraph (f)(5) to the extent of any ''readily marketable securities,'' subject to percentage deductions (*i.e.,* ''securities haircuts'') as specified in paragraph (f)(5)(iv) of this section, held for the particular Cleared Swaps Customer to secure its debit balance.

(ii) For purposes of this section, ''readily marketable'' shall be defined as having a ''ready market'' as such latter term is defined in Rule 15c3–1(c)(11) of the Securities and Exchange Commission (§ 241.15c3–1(c)(11) of this title).

(iii) In order for a debit balance to be deemed secured by ''readily marketable securities,'' the futures commission merchant must maintain a security interest in such securities, and must hold a written authorization to liquidate the securities at the discretion of the futures commission merchant.

(iv) To determine the amount of such debit balance secured by ''readily marketable securities,'' the futures commission merchant shall:

(A) Determine the market value of such securities; and

(B) Reduce such market value by applicable percentage deductions (*i.e.,* ''securities haircuts'') as set forth in Rule 15c3–1(c)(2)(vi) of the Securities and Exchange Commission (§ 240.15c3–1(c)(2)(vi) of this title). Futures commission merchants that establish and enforce written policies and procedures to assess the credit risk of commercial paper, convertible debt instruments, or nonconvertible debt instruments in accordance with Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (§ 240.15c3–1(c)(2)(vi) of this title) may apply the lower haircut percentages specified in Rule 240.15c3–1(c)(2)(vi) for such commercial paper, convertible debt instruments and nonconvertible debt instruments.

* * * * *

(g) *Segregated account; Daily computation and record.*

* * * * *

(11) A futures commission merchant that carries Cleared Swaps Accounts for Cleared Swaps Customers as separate accounts for separate account customers pursuant to § 1.44 of this chapter shall:

(i) Calculate the total amount of Cleared Swaps Customer Collateral on deposit in segregated accounts on behalf of Cleared Swaps Customers pursuant to paragraph (g)(1)(i) of this section and the total amount of Cleared Swaps Customer Collateral required to be on deposit in segregated accounts on behalf of Cleared Swaps Customers pursuant to paragraph (g)(1)(ii) of this section by including the separate accounts of the separate account customers as if the separate accounts were accounts of separate entities;

(ii) Offset a net deficit in a particular Cleared Swaps Customer Account carried as a separate account of a separate account customer in accordance with paragraphs (f)(4) and (5) and (g)(1)(ii) of this section against the current market value of readily marketable securities held only for the particular separate account of such separate account customer; and

(iii) Document its segregation computation in the Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under 4d(f) of the CEA required by paragraph (g)(2) of this section by incorporating and reflecting the Cleared Swaps Customer Accounts carried as separate accounts of separate account customers as accounts of separate entities.

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

■ 12. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6c, and 12a, unless otherwise noted.

■ 13. Amend § 30.2 by revising paragraph (b) to read as follows:

§ 30.2 Applicability of the Act and rules.

* * * * *

(b) The provisions of §§ 1.20 through 1.30, 1.32, 1.35(a)(2) through (4) and (c) through (i), 1.36(b), 1.38, 1.39, 1.40, 1.45 through 1.51, 1.53, 1.54, 1.55, 1.58, 1.59, 33.2 through 33.6 and parts 15 through 20 of this chapter shall not be applicable to the persons and transactions that are subject to the requirements of this part.

■ 14. Amend § 30.7 by:

■ a. Republishing the paragraph heading of paragraph (f);

■ b. Republishing the paragraph heading of paragraph (f)(2);

■ c. Revising paragraph (f)(2)(iv);

■ d. Adding paragraph (f)(2)(v);

■ e. Republishing the paragraph heading of paragraph (l); and

■ f. Adding paragraph (l)(11).

The republications, revisions, and additions read as follows:

§ 30.7 Treatment of foreign futures or foreign options secured amount.

* * * * *

(f) *Limitations on use of 30.7 customer funds.*

* * * * *

(2) Requirements as to amount.

* * * * *

(iv) The futures commission merchant must, at all times, maintain in segregation an amount equal to the sum of any credit and debit balances that 30.7 customers of the futures commission merchant have in their accounts. Notwithstanding the above, a futures commission merchant must add back to the total amount of funds required to be maintained in segregation any 30.7 accounts with debit balances in the amounts calculated in accordance with paragraph (f)(2)(v) of this section.

(v) The futures commission merchant, in calculating the total amount of funds required to be maintained in segregation pursuant to paragraph (f)(2)(iv) of this section, must include any debit balance, as calculated pursuant to this paragraph (f)(2)(v), that a 30.7 customer has in its account, to the extent that such debit balance is not secured by ''readily marketable securities'' that the particular 30.7 customer deposited with the futures commission merchant.

(A) For purposes of calculating the amount of a 30.7 account's debit balance that the futures commission merchant is required to include in its calculation of its total segregation requirement pursuant to this paragraph (f)(2)(v), the futures commission merchant shall calculate the net liquidating equity of each 30.7 account in accordance with paragraph (f)(2)(ii) of this section, except that the futures commission merchant shall exclude from the calculation any noncash collateral held in the 30.7 account as margin collateral. The futures commission merchant may offset the debit balance computed under this paragraph (f)(2)(v) to the extent of any ''readily marketable securities,'' subject to percentage deductions (*i.e.,* ''securities haircuts'') as specified in paragraph (f)(2)(v)(D) of this section, held for the particular 30.7 customer to secure its debit balance.

(B) For purposes of this section, ''readily marketable'' shall be defined as having a ''ready market'' as such latter term is defined in Rule 15c3–1(c)(11) of the Securities and Exchange Commission (§ 241.15c3–1(c)(11) of this title).

(C) In order for a debit balance to be deemed secured by ''readily marketable securities,'' the futures commission merchant must maintain a security interest in such securities, and must hold a written authorization to liquidate the securities at the discretion of the futures commission merchant.

(D) To determine the amount of such debit balance secured by ''readily marketable securities.'' To do so, the futures commission merchant shall:

(1) Determine the market value of such securities; and

(2) Reduce such market value by applicable percentage deductions (*i.e.,* ''securities haircuts'') as set forth in Rule 15c3–1(c)(2)(vi) of the Securities and Exchange Commission (§ 240.15c3–1(c)(2)(vi) of this title). Futures commission merchants that establish and enforce written policies and procedures to assess the credit risk of commercial paper, convertible debt instruments, or nonconvertible debt instruments in accordance with Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (§ 240.15c3–1(c)(2)(vi) of this title) may apply the lower haircut percentages specified in Rule 240.15c3–1(c)(2)(vi) for such commercial paper, convertible debt instruments and nonconvertible debt instruments.

* * * * *

(l) *Daily computation of 30.7 customer secured amount requirement and details regarding the holding and investing of 30.7 customer funds.*

* * * * *

(11) A futures commission merchant that carries 30.7 accounts for 30.7 customers as separate accounts for separate account customers pursuant to § 1.44 of this chapter shall:

(i) Calculate the total amount of 30.7 customer funds on deposit in 30.7 accounts on behalf of 30.7 customers pursuant to paragraph (l)(1) of this section and the total amount of 30.7 customer funds required to be on deposit in segregated accounts on behalf of 30.7 customers pursuant to paragraph (l)(1) of this section by including the separate accounts of the separate account customers as if the separate accounts were accounts of separate entities;

(ii) Offset a net deficit in a particular 30.7 account carried as a separate account of a separate account customer in accordance with this paragraph (l) against the current market value of readily marketable securities held only for the particular separate account of such separate account customer; and

(iii) Document its segregation computation in the Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers pursuant to Commission Regulation 30.7 required by paragraph (l)(3) of this section by incorporating and reflecting the 30.7 accounts carried as separate accounts of separate account customers as accounts of separate entities.

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 2, 6(c), 7a–1, and 12a(5); 12 U.S.C. 5464; 15 U.S.C. 8325; Section 752 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, title VII, sec. 752, July 21, 2010, 124 Stat. 1749.

■ 16. Amend § 39.13 by:

■ a. Republishing the paragraph heading of paragraph (g);

■ b. Republishing the paragraph heading of paragraph (g)(8);

■ c. Adding paragraph (g)(8)(i)(E); and

■ d. Revising paragraph (g)(8)(iii).

The republications, addition and revision to read as follows:

§ 39.13 Risk management.

* * * * *

(g) Margin requirements—

* * * * *

(8) Customer margin—

(i) * * *

(E) For purposes of this paragraph (g)(8)(i), each separate account of a separate account customer (as such terms are defined in § 1.44 of this chapter) shall be treated as an account of a separate individual customer.

* * * * *

(iii) *Withdrawal of customer initial margin.* A derivatives clearing organization shall require its clearing members to ensure that their customers do not withdraw funds from their accounts with such clearing members unless the net liquidating value plus the margin deposits remaining in a customer's account after such withdrawal are sufficient to meet the customer initial margin requirements with respect to all products and swap portfolios held in such customer's account which are cleared by the derivatives clearing organization, except as provided for in § 1.44 of this chapter.

* * * * *

Issued in Washington, DC, on February 23, 2024, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Regulations To Address Margin Adequacy and To Account for the Treatment of Separate Accounts by Futures Commission Merchants—Commission Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Goldsmith Romero, Mersinger, and Pham voted in the affirmative. Commissioner Johnson voted to concur. No Commissioner voted in the negative.

Appendix 2—Statement of Commissioner Kristin N. Johnson

Introduction

The Commodity Futures Trading Commission (Commission or CFTC) has adopted several key regulations that establish guardrails to protect against the misuse or misapplication of customer funds. The Commodity Exchange Act (CEA) and Commission regulations establish critical protections for customers to help prevent them from losing money as a result of losses caused by their futures commission merchant (FCM) or their fellow customers at the FCM. These include Sections 4 and 4d of the CEA and Parts 1, 22, and 30 of the Commission regulations, which require an FCM to segregate its own funds from those of its customers and prohibit an FCM from using one customer's funds to cover the losses of another.

A foundational principle of the Commission's customer protection regime is a prohibition against the use of one customer's funds to cover the liabilities of another customer. It is difficult to overstate the importance of regulations that prevent this kind of misuse, particularly when customer funds are commingled in a single omnibus account.

The Commission must not weaken regulations intended to reinforce these protections. Determining whether a regulation might result in weakening these protections requires careful qualitative and quantitative assessment and evaluation of (un)anticipated risks and thoughtful reinforcement of robust risk management requirements.

The Commission is amending an existing customer protection provision under CFTC Regulation 39.13(g)(8)(iii). This regulation establishes a margin adequacy requirement by prohibiting the withdrawal of funds by a customer of a clearing FCM if such withdrawal would result in the account being undermargined. The purpose of Commission Regulation 39.13(g)(8)(iii) is to mitigate the risk that a clearing member, using an omnibus margin account, fails to hold sufficient funds from one customer to cover that customer's initial margin requirements and effectively covers the customer's margin shortfall using another customer's funds.

The proposed amendment would codify the requirements of CFTC Regulation 39.13(g)(8)(iii) in Part 1 of the Commission's regulations governing FCMs, thus extending the requirements to non-clearing FCMs as well, but would permit an FCM to treat the separate accounts of a single customer, or beneficial owner, as accounts of separate entities, subject to certain risk-mitigation conditions (Proposed Rule).[1] This amendment thus allows disbursements on a separate account basis such that a customer may withdraw funds from one account even if its other account is undermargined, so long as the customer is in compliance with the relevant risk-management conditions.

It is indisputable that the Proposed Rule introduces risks that do not exist under CFTC Regulation 39.13(g)(8)(iii). Permitting a customer to withdraw ''excess'' margin from one account when it has insufficient margin in another account could exacerbate the customer's overall margin deficiency and any shortfall in the FCM's customer account, amplify default risk, and increase fellow-customer risk. Prior to finalizing this rule, it is imperative that the Commission understand the potential risks that may arise by permitting disbursements on a separate account basis.

Customer asset protections are essential to the individuals and institutional businesses whose assets are held by an intermediary and therefore may be at risk. As I have stated previously,

creating and enforcing effective, well-tailored rules governing the custody, investment, and preservation of customer funds must be among the Commission's highest priorities. Without these rules and rigorous enforcement, our markets would lack the foundation of trust upon which every transaction is built.[2]

[1] This would permit non-clearing FCMs to engage in separate account treatment and would allow FCMs, rather than DCOs, to determine whether or not to permit their customers to elect such treatment.

[2] Kristin N. Johnson, Commissioner, CFTC, Statement on Preserving Trust and Preventing the

I am supportive of careful, well-tailored, workable, and practical regulations that do not undermine or weaken customer protection. I strongly believe that the Commission would have benefited from a formal report detailing relevant risk management concerns that may arise as a result of introducing the Proposed Rule. Among other issues outlined below, the Commission would benefit from receiving data and analysis that details the potential risk management consequences attendant to adopting the Proposed Rule as well as any related measures that may mitigate risk management concerns.

Before adopting a final rule, the Commission, through supporting data and analyses, must assure itself that the Proposed Rule accomplishes the customer protection and risk management goals of regulation 39.13(g)(8)(iii).

Call for Supporting Risk Management Data and Analyses

The Commission is amending CFTC Regulation 39.13(g)(8)(iii) to permit disbursements on a separate accounts basis, subject to certain risk-mitigating conditions.

As I have said before, permitting disbursements on a separate accounts basis is inconsistent with the plain language of CFTC Regulation 39.13(g)(8)(iii), which was adopted by the Commission following the 2008–2009 financial crisis pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), and introduces new or additional risks. I am, however, supportive of solutions that are grounded in data and analyses demonstrating that an amendment to CFTC Regulation 39.13(g)(8)(iii) achieves the same goals and objectives underpinning this regulation.

It would be helpful, in the context of evaluating the Proposed Rule, to have a sufficiently robust analysis of the sufficiency and adequacy of the risk-mitigating measures that have been in place since 2019.

The Commission should conduct a study to assess any additional risks and the scope and magnitude of such risks. Alongside a formal report offering a data-driven analysis, commentators should include comprehensive analyses and evidence indicating that the adoption of the Proposed Rule does not increase risks to our markets, or, if there are increased risks, that the risk-mitigation measures adopted by the Commission are effective. We also welcome feedback on other measures to ensure that FCMs maintain robust risk-management practices.

Margin Adequacy Requirement

In order to register, and maintain registration, as a derivatives clearing organization (DCO), a clearinghouse must demonstrate the ability, and continue, to comply with the core principles for DCOs set forth in Section 5b of the CEA. The core principles were added to the CEA by the Commodity Futures Modernization Act of 2000 (CFMA). In implementing the CFMA, the Commission did not adopt implementing rules and regulations, but instead promulgated guidance for DCOs on compliance with the core principles.

Section 725(c) of the Dodd-Frank Act amended Section 5b(c)(2) of the CEA to expressly confirm that the Commission may adopt implementing rules and regulations pursuant to its rulemaking authority under Section 8a(5) of the CEA.

The Commission adopted CFTC Regulation 39.13(g)(8)(iii) in 2011. The adoption was part of a broader rulemaking to implement certain provisions of the Dodd-Frank Act governing the activities of DCOs, including Core Principle D—risk management—requiring each DCO to ensure that its risk management framework is sufficient to manage the risks associated with discharging the responsibilities of a DCO through the use of appropriate tools and procedures. CFTC regulations require DCOs to collect initial margin from their customers on a gross basis, even if customer collateral is held in an omnibus account.

Under CFTC Regulation 39.13(g)(8)(iii), a DCO must require ''its clearing members to ensure that their customers do not withdraw funds from their accounts with such clearing members unless the net liquidating value plus the margin deposits remaining in a customer's account after such withdrawal are sufficient to meet the customer initial margin requirements with respect to all products and swap portfolios held in such customer's account which are cleared by the derivatives clearing organization.'' [3]

The purpose of this regulation is to mitigate the risk that a clearing member, using an omnibus margin account, fails to hold sufficient funds from one customer to cover such customer's initial margin requirements and effectively covers such customer's margin shortfall using another customer's funds.

In the Preamble to the Proposed Rule, the Commission recognizes,

[i]n light of the use of omnibus margin accounts, where the funds of multiple customers are held together, this safeguard is necessary to ''avoid the misuse of customer funds'' by mitigating the likelihood that the clearing member will effectively cover one customer's margin shortfall using another customer's funds.[4]

An omnibus account structure creates a potential dilution of the pool of funds available to U.S. customers in the event of a bankruptcy of the FCM to the extent the FCM's customer account is undermargined. In a bankruptcy proceeding, customer property is distributed *pro rata* and so all customers share in any shortfall in the customer account of a particular class.

Concerns With Separate Accounts

In 2019, the Joint Audit Committee (JAC) issued a regulatory alert providing an interpretation of the requirements of CFTC Regulation 39.13(g)(8)(iii).[5] Under the JAC's interpretation, separate accounts of the same customer were to be combined for the purpose of determining the amount of margin funds available for disbursement from any of the accounts.

This interpretation was inconsistent with the prevailing practices, including as documented under customer agreements, among FCMs, and FCM customers with respect to the treatment of separate accounts.

FCMs would establish separate accounts for customers for commercial purposes. For example, ''such accounts are: (i) separately contracted for with different asset management firms; (ii) established as a separate investment portfolio within the same asset management firm; (iii) established by a commercial entity for the purpose of a commodity or margin financing arrangement and secured by the lender as a secondary security interest; or (iv) necessary to separately account for or settle obligations of separate branches established pursuant to separate legal/country jurisdictions.'' [6] Although separate accounts may be owned by the same customer or beneficial owner, FCMs did not combine those accounts for margin purposes.

In response to the JAC's interpretation, several industry trade associations requested that the Commission provide time limited no-action relief with respect to the treatment of separate accounts by FCMs.[7] Specifically, they requested that the Commission interpret Commission Regulation 39.13(g)(8)(iii) to permit separate accounts of the same customer to ''be treated as separate legal entities'' therefore not combined when determining an account's margin funds available for disbursement.'' [8]

The separate account treatment permits margin to be withdrawn from one account of a customer while another account of that same customer faces a margin call, it creates the risk that a customer will withdraw funds from the account in surplus and then later default on the margin call, leaving the FCM with fewer resources to cover the resulting losses.

Separate Account Treatment

In 2019, the Commission issued a time-limited, temporary no-action letter that permitted disbursements on a separate account basis, subject to certain conditions that mitigate the risk of default and strengthen an FCM's risk-management of customers granted separate account treatment. The Commission aimed to achieve the customer protection and risk management goals of CFTC Regulation 39.13(g)(8)(iii).

In 2023, the Commission approved a proposed rule to codify, in Part 39 governing DCOs, the staff no-action position regarding the treatment of separate accounts of a single customer by an FCM that is a clearing

Erosion of Customer Protection Regulation (Nov. 3, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnstatement110323.*

[3] 17 CFR 39.13 (g)(8)(iii).

[4] Regulations to Address Margin Adequacy and to Account for the Treatment of Separate Accounts by Futures Commission Merchants (Voting Draft) at 7.

[5] *See* JAC, Regulatory Alert #19–02 (May 14, 2019), *http://www.jacfutures.com/jac/jacupdates/2019/jac1902.pdf.*

[6] *See, e.g.,* Letter from SIFMA AMG to Brain A. Bussey, Dir. at Div. of Clearing and Risk, CFTC, & Matthew B. Kulkin, Dir. at Div. of Swap Dealer and Intermediary Oversight, CFTC (June 7, 2019), *https://www.sifma.org/wp-content/uploads/2021/01/Request-for-Interpretation-Rule-1.56b-and-Rule-39.131.pdf.*

[7] *Id.*

[8] *Id.*

member of a DCO. In April 2023, the Commission published in the **Federal Register** a notice of proposed rulemaking that would codify the no-action letter.

Following comments to the proposed rule supporting direct application of separate account treatment to FCMs (both clearing and non-clearing), the Commission proposes to withdraw the original proposal in favor of the Proposed Rule.[9]

The Proposed Rule codifies (with important changes, including the establishment of a margin adequacy requirement applicable to clearing and non-clearing FCMs and increased specificity in the one-day margin requirement) the existing no-action position under which FCMs are permitted to treat different accounts of the same beneficial owner as separate accounts for purposes of permitting margin withdrawals.

Sufficiency of Risk-Mitigation Conditions

The Proposed Rule permits separate account treatment subject to risk-management standards. The customer protections built into this Proposed Rule help to mitigate the risk that it creates, particularly by requiring customers receiving separate account treatment to meet margin calls the same day they are made (referred to as the one-day margin requirement), and requiring separate account treatment to cease when the customer or the FCM is no longer operating in the ordinary course of business. In many ways, the enhanced requirements for FCMs to maintain internal controls and policies and procedures designed to ensure compliance with the Proposed Rule strengthen the risk-management compliance practices of FCMs.

One-day margin requirement. Under the one-day margin requirement, a separate account customer must meet any margin call by the close of the Fedwire Funds Service on the same day.[10] This requirement is subject to enumerated exemptions, including for payments in certain foreign currencies where the mechanics of international payment systems would make compliance with the one-day margin requirement impractical.[11]

Ordinary course of business. Under the Proposed Rule, separate account treatment for a customer would cease if the customer or its FCM ceased operating in the ordinary course of business—the day-to-day operation of the FCM's relationship with its customer.[12] These events include a failure to meet the one-day margin call as well as an event of default, financial distress, other distress, insolvency, bankruptcy, or an inability to perform financial obligations. These events are standard across all FCMs that elect separate account treatment.[13]

These two requirements work together to mitigate the risk of default by a customer that benefits from separate account treatment. The ordinary course of business standard works to prevent an insolvent or soon-to-be insolvent beneficial owner from continuing to receive separate account treatment. And the one-day margin requirement creates a cap on the amount of time during which an insolvent or soon-to-be insolvent beneficial owner could take funds out of one account while failing to meet a margin call for another account.

Conclusion

As I have previously noted,

[s]ince the earliest days of federal prudential and market regulation in our nation, thought leaders have advocated for regulation that preserves customer assets held by others. In his book published in 1914—*Other People's Money*—former Supreme Court Justice Louis Brandeis advocated for similar reforms that safeguard the assets of financial markets customers.[14]

Under the CEA, the Commission is directed to ''protect all market participants from . . . misuses of customer assets.''[15] For these reasons articulated above, I concur with the Proposed Rule.

The final rule addressing these issues, however, must be supported by data and analyses indicating the potential risks arising from the Proposed Rule and how such risks will be managed. I look forward to comments on this Proposed Rule, particularly comments that demonstrate the sufficiency or adequacy of the risk-mitigation conditions in the Proposed Rule.

I would like to thank the staff of the Division of Clearing and Risk for their thoughtful work on this rule and for their willingness to incorporate feedback from my office into the proposed amendments published today.

Appendix 3—Statement of Support of Commissioner Caroline D. Pham

I support the Notice of Proposed Rulemaking on the Regulations to Address Margin Adequacy and to Account for the Treatment of Separate Accounts by Futures Commission Merchants (FCMs) (Treatment of Separate Accounts Proposal or NPRM), as well as the Commission's withdrawal of the first proposal on this issue (2023 Proposal).[1] Today's Treatment of Separate Accounts Proposal gets the Commission closer to the pragmatic approach it was striving for in the 2023 Proposal. To help ensure the Commission truly gets there in the final rule, I highlight specific areas for public comment below.

I would like to thank Daniel O'Connell and Bob Wasserman in the Division of Clearing and Risk, and Jennifer Bauer and Joshua Beale in the Market Participants Division, for their work on the NPRM. I appreciate the staff's generosity with their time for briefings and answering questions, as well as working with me to make revisions to address my concerns.

As the Treatment of Separate Accounts Proposal explains, two of the fundamental purposes of the Commodity Exchange Act (CEA) are the avoidance of systemic risk and the protection of market participants from misuses of customer assets.[2] Regulation 39.13(g)(8)(iii) requires that a CFTC-registered derivatives clearing organization (DCO) requires its clearing members to ensure that their customers do not withdraw funds from clearing member accounts, with one exception.

Clearing member customers can withdraw funds if the net liquidating value plus the margin deposits remaining in the account meet the customer's initial margin requirements with respect to all products and swap portfolios cleared by the DCO that are held in the customer's account. This is known as the ''Margin Adequacy Requirement'' because it helps ensure a clearing member has, from a customer, funds sufficient to cover the customer's cleared initial margin requirements. And, in light of the use of omnibus margin accounts, the Margin Adequacy Requirement avoids the clearing member covering one customer's margin shortfall with another customer's funds. Overall, this is one of the many CFTC rules that protects customer funds.

The 2023 Proposal, among other things, proposed allowing DCOs to permit clearing FCMs to treat the separate accounts of a single beneficial owner, or customer, as accounts of separate legal entities to satisfy the requirements of Regulation 39.13(g)(8)(iii),[3] subject to multiple conditions. The 2023 Proposal was intended to accommodate certain FCM customer agreements that provide that certain accounts carried by the FCM that have the same beneficial owner are treated as accounts for

[9] This would permit non-clearing FCMs to engage in separate account treatment and would allow FCMs, rather than DCOs, to determine whether or not to permit their customers to elect such treatment.

[10] *See e.g.,* Proposed 17 CFR 1.44(f).

[11] *Id.*

[12] *See e.g.,* Proposed 17 CFR 1.44(c).

[13] *See e.g.,* Proposed 17 CFR 1.44(e).

[14] Kristin N. Johnson, Commissioner, CFTC, Statement on Closing a Gap, Preserving Market Integrity and Protecting Clearing Member Funds Held by Derivatives Clearing Organizations (Dec. 18, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement121823b.*

[15] 7 U.S.C. 5(b).

[1] The Commission's first proposal on the matter was in April 2023. *See* Derivatives Clearing Organization Risk Management Regulations to Account for the Treatment of Separate Accounts by Futures Commission Merchants, 88 FR 22934 (Apr. 14, 2023) (2023 Proposal), *https://www.federalregister.gov/documents/2023/04/14/2023-06248/derivatives-clearing-organization-risk-management-regulations-to-account-for-the-treatment-of.*

[2] CEA section 4d(a)(2) Regulation 1.20(a) require an FCM to separately account for and segregate from its own funds all money, securities, and property which it has received to margin, guarantee, or secure the trades or contracts of its commodity customers. 7 U.S.C. 6d(a)(2); 17 CFR 1.20(a). CEA section 4d(a)(2) and Regulation 1.22(a) prohibit an FCM from using the money, securities, or property of one customer to margin or settle the trades or contracts of another customer. 7 U.S.C. 6d(a)(2); 17 CFR 1.22(a).

[3] As explained in the NPRM and the 2023 Proposal, the Commission is proposing to codify the relief in CFTC Letter No. 19–17, July 10, 2019, *https://www.cftc.gov/csl/19-17/download* as extended by CFTC Letter No. 20–28, Sept. 15, 2020, *https://www.cftc.gov/csl/20-28/download;* CFTC Letter No. 21–29, Dec. 21, 2021, *https://www.cftc.gov/csl/21-29/download;* and CFTC Letter No. 22–11, Sept. 15, 2022, *https://www.cftc.gov/csl/22-11/download;* CFTC Letter No. 23–13, Sept. 11, 2023, *https://www.cftc.gov/csl/23-13/download.*

different legal entities for commercial purposes.

However, in response to comments, the Commission is now withdrawing the 2023 Proposal and issuing the Treatment of Separate Accounts Proposal. I commend this decision because I believe this NPRM gets the Commission closer to what it set out to do in the 2023 Proposal: accommodate certain FCM customer agreements that provide that certain accounts carried by the FCM that have the same beneficial owner are treated as accounts for different legal entities for commercial purposes.

To aid in this effort, I have highlighted specific areas for public comment below.

Specific Areas for Public Comment

Ordinary Course of Business

I encourage commenters to review all of the definitions, in particular those in proposed new Regulation 1.44. For instance, I am particularly interested in whether the Commission has improved the accuracy of the definition of ''ordinary course of business,'' along with what constitutes events inconsistent with the ''ordinary course of business'' in Regulation 1.44(e). As we learned with the 2023 Proposal, getting this right is pivotal to having the proposed framework function as intended.

One Business Day Margin Call

As a second definitions example, I am interested in whether the Commission has improved the definition of ''one business day margin call'' along with its requirements in Regulation 1.44(f). Commenters provided extensive comments on this provision, and while the NPRM has improved on it, we need to be sure the proposed definition does not impede FCM risk management practices and is consistent with the law or standard practices in other jurisdictions and operationally feasible.

The Treatment of Separate Accounts Proposal provides that the relevant deadline for payment of margin in fiat currencies other than USD may be extended by up to one additional business day and still be considered in compliance with the requirements of Regulation 1.44(f) if payment is delayed due to a banking holiday in the jurisdiction of issue of the currency.

Regulation 1.44(f)(4) further provides that, for payments in EUR, either the separate account customer or the investment manager managing the separate account may designate only one country within the eurozone that they have the most significant contacts with for purposes of meeting margin calls in that separate account, whose banking holidays shall be referred to for such purpose.

Since the eurozone is comprised of 20 countries, each with their own national laws and banking holidays, I am concerned that the CFTC is imposing an overly prescriptive and unworkable requirement with little practical benefit. I am interested in whether commenters believe it will be impracticable to comply with Regulation 1.44(f)(4). I encourage commenters to look at Question 7 in the NPRM—which staff added at my request—for specific examples and additional prompts.

Other Circumstances Involving Banking Holidays

Similarly, the Treatment of Separate Accounts Proposal also provides an exception from Regulation 1.44(f)(1), set forth in Regulation 1.44(f)(7), for the special case of certain holidays when some DCMs may be open for trading, but banks are closed. I am interested in whether the Commission's expansion of the exception from the 2023 Proposal fully resolves the issues raised by commenters, or still poses operational or compliance issues for FCMs.

Conclusion

Overall, I am pleased to support the Treatment of Separate Accounts Proposal and hope we can get it right in the final rule. I look forward to the comments on the NPRM.

[FR Doc. 2024–04107 Filed 2–29–24; 8:45 am]

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Part IV

Department of Health and Human Services

45 CFR Part 98
Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF); Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 98

RIN 0970–AD02

Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)

AGENCY: Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule makes regulatory changes to the Child Care and Development Fund (CCDF). These changes lower child care costs for families participating in CCDF, improve the program's child care provider payment rates and practices, and simplify enrollment in the child care subsidy program. The final rule also includes technical and other changes to improve clarity and program implementation.

DATES: *Effective:* April 30, 2024.

Temporary Waivers: States and Territories that are not in compliance with the provisions of this final rule on the effective date may request a temporary waiver for an extension of up to two years if needed to come into compliance. For Tribal Lead Agencies, ACF will determine compliance through review and approval of the FY 2026–2028 Tribal CCDF Plans that become effective October 1, 2025.

FOR FURTHER INFORMATION CONTACT: Megan Campbell, Office of Child Care, 202–690–6499 or *megan.campbell@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This final rule is being issued under the authority granted to the Secretary of Health and Human Services by the CCDBG Act of 1990, as amended (42 U.S.C. 9857, *et seq.*), and section 418 of the Social Security Act (42 U.S.C. 618).

II. Background

The Child Care and Development Block Grant Act (CCDBG), hereafter referred to as the ''Act'' (42 U.S.C. 9857 *et seq.*), together with section 418 of the Social Security Act (42 U.S.C. 618), authorize the Child Care and Development Fund (CCDF), which is the primary federal funding source devoted to supporting families with low incomes afford child care and to increasing the quality of child care for all children. CCDF plays a vital role in supporting child development and family well-being, facilitating parents' employment, training, and education, and improving the economic well-being of participating families. Families with children under age 5 and incomes below the federal poverty line who pay for child care spend 36 percent of their income on child care on average, which leaves insufficient funding for food, housing, and other basic costs.[1] Households with incomes just above the federal poverty level spend more than 20 percent of their income on child care, on average.[2] Even school-age care can amount to 8 to 11.5 percent of family income.[3] Without help paying for child care, the cost can drive parents to exit the workforce or seek out less expensive care, which may be unlicensed or unregulated, have less rigorous quality or safety standards, and be less reliable.[4] In fiscal year (FY) 2021, the most current available data, CCDF helped nearly 800,000 families and more than 1.3 million children under age 13 with financial assistance for child care each month.[5] CCDF also promotes the quality of child care for all children, requiring CCDF Lead Agencies to spend at least 12 percent of their CCDF funding each year on activities to improve child care quality for all children in care.

Access to affordable high-quality child care has numerous short- and long-term benefits for children, families, and society, supporting child and family well-being in a manner that fuels prosperity and strengths communities and the economy. Child care is a necessity for most families with young children and reliable access leads to better parental earnings and employment and supports parents' educational attainment.[6] Specifically, maternal employment increases in response to more available and more affordable child care[7] and drops when child care becomes more expensive for families.[8] Moreover, children with stably employed parents are far less likely to experience poverty than

[1] Madowitz, M. et al. (2016). Calculating the Hidden Cost of Interrupting a Career for Child Care. Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/calculating-the-hidden-cost-of-interrupting-a-career-for-child-care/.*

[2] National Survey of Early Care and Education Project Team (2022): E. Hardy, J.E. Park. 2019 NSECE Snapshot: Child Care Cost Burden in U.S. Households with Children Under Age 5. OPRE Report No. 2022–05, Washington DC: Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS). *https://www.acf.hhs.gov/opre/report/2019-nsece-snapshot-child-care-cost-burden-us-households-children-under-age-5.*

[3] Landivar, L.C., Graf, N.L., & Rayo, G.A. (2023). Childcare prices in local areas: Initial findings from the national database of childcare prices. Women's Bureau Issue Brief. U.S. Department of Labor, Washington, DC. Issued January.

[4] Hill, Z., Bali, D., Gebhart, T., Schaefer, C., & Halle, T. (2021) Parents' reasons for searching for care and results of search: An analysis using the Access Framework. OPRE Report #2021–39. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. *https://www.acf.hhs.gov/opre/report/parents-reasons-searching-early-care-and-education-and-results-search-analysis-using.*

[5] Unpublished FY 2021 ACF administrative data.

[6] Gault, B. and Reichlin Cruse, L. (2017). Access to Child Care Can Improve Student Parent Graduation Rates. Washington, DC: Institute for Women's Policy Research. *https://iwpr.org/iwpr-general/access-to-child-care-can-improve-student-parent-graduation-rates/.*

[7] Herbst, C. (2022). ''Child Care in the United States: Markets, Policy, and Evidence.'' Journal of Policy Analysis and Management. *https://doi.org/10.1002/pam.22436.;* Herbst, C., and E. Tekin, 2011. ''Do Child Care Subsidies Influence Single Mothers' Decision to Invest in Human Capital?'' Economics of Education Review 30, no. 5: 901–12. *https://doi.org/10.1016/j.econedurev.2011.03.006.*

[8] Landivar, L.C., Graf, N.L., and Altamirano Rayo, G. (2023). Childcare Prices in Local Areas: Initial Findings from the National Database of Childcare Prices. Women's Bureau Issue Brief. U.S. Department of Labor. *https://www.dol.gov/sites/dolgov/files/WB/NDCP/508_WB_IssueBrief-NDCP-20230213.pdf.*

children whose parents have less consistent employment.[9] The positive effects of high-quality child care are especially pronounced for families with low incomes and families experiencing adversity.[10] High-quality child care environments can also be important for children's cognitive, behavioral, and socio-emotional development, helping chart a pathway to success in school and beyond.[11]

Despite the importance of access to high-quality child care to children, families, communities, and our country's economic growth, child care remains a fundamentally broken system due to chronic underinvestment. As a result of this underinvestment, the child care system relies on a very poorly compensated workforce and unaffordable parent fees, causing most families to struggle to find or afford high-quality child care that meets their needs.[12] There are not enough child care programs to serve families who need care and many programs do not offer care during the hours or days families require.[13] More than half of families in the United States live in communities where potential demand for child care outstrips supply by at least three to one.[14] In the 2019 National Household Education Survey on Early Childhood Program Participation, parents of children under the age of 6 reported the lack of available child care as the second biggest barrier to finding child care, with cost being the first.[15]

The COVID–19 public health emergency exacerbated these challenges, highlighting both the fragility of the child care sector and the central role child care plays in the broader economy.[16] Numerous child care programs closed their doors permanently between the widespread onset of COVID–19 in March 2020 and the federal supports in the American Rescue Plan (ARP) in 2021. With ARP Child Care Stabilization funding, HHS invested $24 billion in the child care sector to help child care providers keep their doors open and to provide child care workers with higher pay, bonuses, and other benefits. These efforts helped over 225,000 child care programs serving as many as 10 million children across the country; saved families with young children who rely on paid child care approximately $1,250 per child per year; and helped hundreds of thousands of women with young children enter or re-enter the workforce more quickly, increasing the labor force participation and employment of mothers of young children by an additional 3 percentage points.[17]

Despite these investments, workforce shortages resulting in part from a tight labor market and a fundamentally broken child care market that forces low wages continue to put additional strains on child care supply across the country.[18]

In the years since the 2014 reauthorization of the Act (P.L. 113–186) and the accompanying regulations in 2016 (81 FR 67438, Sept. 30, 2016), CCDF Lead Agencies have worked hard to strengthen child care policies and practices to make the child care subsidy system more affordable and accessible to families and to support the continuity of care for children and working families. However, regulatory changes to the CCDF program are needed to address some of the programmatic and systemic challenges described here and to ensure the program properly addresses the needs of children and families it serves. Though significant new investments and fundamental system reform are needed to fully realize affordable high-quality child care for all who need it, it is clear more must be done now within the federal child care program to help parents with low incomes that participate in the CCDF program access affordable high-quality child care that meets their families' needs.

III. Executive Summary

The final rule amends the CCDF regulations to: (1) lower families' costs for child care, to increase access to child care and improve family well-being; (2) strengthen CCDF payment practices to child care providers, to expand parents' child care options and better support child care operations; and (3) reduce program bureaucracy for families, to make it easier for families to enroll in CCDF. The rule also makes some technical and other changes for improved clarity.

Currently, some families participating in CCDF have co-payments that are a significant and destabilizing financial strain on family budgets and a barrier to participating in the CCDF program and maintaining employment.[19] Many current CCDF provider payment rates and practices limit parent choice in child care arrangements, destabilize provider operations, contribute to supply issues, disincentivize provider participation in CCDF, and do not adequately cover the cost of care. This final rule includes important changes to the CCDF program to help participating families access the child care they need and better support child care providers in the essential work they do.

Lowering Families' Costs for Child Care

Once implemented, HHS projects that the rule will lower the cost of child care for over 100,000 families participating in CCDF, improving family well-being and economic stability and better supporting parent employment. First, this final rule requires States and Territories to establish co-payment policies for families receiving CCDF assistance to be no more than 7 percent of family income to help ensure family

[9] Thomson, D., Ryberg, R., Harper, K., Fuller, J., Paschall, K., Franklin, J., & Guzman, L. (2022). Lessons From a Historic Decline in Child Poverty. Bethesda, MD: Child Trends. *https://www.childtrends.org/publications/lessons-from-a-historic-decline-in-child-poverty.*

[10] Bustamante et al. (2022). Adult outcomes of sustained high-quality early learning child care and education: Do they vary by family income? *Child Development, 93*(2), 502–523. *https://srcd.onlinelibrary.wiley.com/doi/10.1111/cdev.13696.;* Davis Schoch, A., Simons Gerson, C., Halle, T., & Bredeson, M. (2023). Children's learning and development benefits from high-quality early care and education: A summary of the evidence. OPRE Report #2023–226. Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

[11] Shonkoff, J.P., & Phillips, D.A. (Eds.). (2000). *From neurons to neighborhoods: The science of early childhood development.* National Academy Press.

[12] U.S. Department of the Treasury (September 2021). The Economics of Child Care Supply in the United States, *https://home.treasury.gov/system/files/136/The-Economics-of-Childcare-Supply-09-14-final.pdf.*

[13] Federal Reserve Bank of St. Louis. The Economic Impact of Child Care by State. *https://www.stlouisfed.org/community-development/child-care-economic-impact.*

[14] Malik, R. et al., (2018). America's Child Care Deserts in 2018. Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/americas-child-care-deserts-2018/.*

[15] Cui, J., and Natzke, L. (2021). Early Childhood Program Participation: 2019 (NCES 2020–075REV), National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC. *http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2020075REV.*

[16] Connecticut Association for Human Services. (July 2022). Child Care at a Breaking Point: The Cost for Parents to Work *https://cahs.org/pdf/child-care-survey-report7-15-22.pdf.;* Powell, L. and Kravitz, D. (August 2022). ''Michigan's child care crisis is worse than policymakers have estimated,'' *Chalkbeat Detroit. https://detroit.chalkbeat.org/2022/8/31/23329007/michigan-child-care-crisis-deserts-worse-policymakers-day-care.*

[17] *https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/07/fact-sheet-historic-biden-harris-administration-investments-in-child-care-recovery-lowered-costs-for-millions-of-families-helped-speed-the-return-to-work-of-hundreds-of-thousands-mothers-and-grew-t/.*

[18] ASPE unpublished analyses using U.S. Bureau of Labor Statistics, Current Employment Statistics—CES.

[19] Landivar, L.C., Graf, N.L., & Rayo, G.A. (2023). Childcare Prices in Local Areas: Initial Findings from the National Database of Childcare Prices. U.S. Department of Labor.; 81 FR 67515 (*https://www.govinfo.gov/content/pkg/FR-2016-09-30/pdf/2016-22986.pdf*).

co-payments are not a barrier to accessing child care. HHS established 7 percent of a family's income as the benchmark for an affordable co-payments in 2016 [20] based on data from the U.S. Census Bureau that showed on average families spent 7 percent of income on child care, but that poor families on average spent approximately four times the share of their income on child care compared to higher income families.[21] According to ACF data, average CCDF co-payments in 11 States exceed 7 percent of family income,[22] 20 States have policies that allow some family co-payments above 7 percent (which can even rise as high as 27 percent of family income),[23] and 16 States do not have clear policies in place to restrict co-payments to any percentage of family income.[24] CCDF family co-payments increased at a rate higher than inflation between 2005–2021, with an average 18 percent increase (after adjusting for inflation) for families during this period.[25]

The Act requires States and Territories to establish and periodically revise co-payment policies that are ''not a barrier to families receiving'' CCDF assistance. (42 U.S.C. 9858c(5)). High co-payments can be a significant and destabilizing financial strain on family budgets, a barrier to families participating in the CCDF program, and a barrier to parent employment.[26] Unaffordable co-payments can limit family participation in the CCDF program, cause parents to cut work hours or exit the workforce entirely, and may lead families to patch together informal, unregulated care that is less expensive, less reliable, and less likely to meet children's developmental needs. Even families receiving child care subsidies continue to experience substantial financial burden in meeting their portion of child care costs.[27] According to a 2023 survey of families that participated in CCDF without a co-pay, 56 percent of parents reported that they would disenroll their children from the subsidized child care program if co-payments were required.[28] Surveyed parents explained that needing to pay a co-payment would cause strain on their family budget, with one parent explaining, ''I would have to choose which minimum necessities to afford that month—rent, utilities, or food . . . the choice is impossible,'' and another sharing, ''I would not be able to work.'' [29] We retain the 7 percent cap in this final rule because we believe amounts in excess of this threshold pose a barrier to child care access in the CCDF program. ACF notes that 7 percent of family income is not affordable for many families participating in CCDF. ACF encourages Lead Agencies to adopt lower co-payment caps and minimize or waive co-payments when possible and this rule makes it easier to do so.

The rule makes it easier for Lead Agencies to waive co-payments for additional families, specifically for families living at or below 150 percent of the federal poverty level, families with children in foster and kinship care, families with children with disabilities, families experiencing homelessness, and children enrolled in Head Start or Early Head Start. ACF believes making it easier for Lead Agencies to waive parent co-payments for these populations will increase uptake of an existing program flexibility and lower child care costs for more families participating in CCDF, especially those with lower incomes and vulnerable children, as well as making it easier to coordinate with Head Start and Early Head Start. Lead Agencies report that families with low incomes in their jurisdictions are still struggling to afford child care, even when they receive child care subsidies.[30] Eliminating child care costs for additional families will better support parents' education, training, and work opportunities and families' financial stability and well-being. As just noted, co-payments, even very low co-payments, remain a barrier for some families to make ends meet, especially families struggling to afford housing costs.[31] This policy will shift costs that currently burden participating families to Lead Agencies and does not impact the total payment made to the child care provider.

These new flexibilities should not discourage States and Territories from taking steps to eliminate or significantly reduce co-payments for additional families who do not fall within one of the categories listed in this rule for pre-approved waiving of co-payments. Lead Agencies may still propose a higher income threshold for waiving co-payments, at their discretion, utilizing existing authority in the statute.

[20] 81 FR 67515.

[21] Laughlin, Lynda. 2013. Who's Minding the Kids? Child Care Arrangements: Spring 2011. Current Population Reports, P70–135. U.S. Census Bureau, Washington, DC. *https://www2.census.gov/library/publications/2013/demo/p70-135.pdf.*

[22] FFY 2021 ACF–801 data report.

[23] FFY 2022–2024 CCDF State Plans.

[24] Ibid.

[25] ASPE tabulations of the ACF–801 database. FY 2005 to FY 2018 were tabulated using the public-use files. FY 2019 to FY 2021 were tabulated using the restricted-use files. FY 2021 data were preliminary.

[26] Landivar, L.C., Graf, N.L., & Rayo, G.A. (2023). Childcare Prices in Local Areas: Initial Findings from the National Database of Childcare Prices. U.S. Department of Labor. *https://www.dol.gov/sites/dolgov/files/WB/NDCP/508_WB_IssueBrief-NDCP-20230213.pdf.;* 81 FR 67515 (*https://www.govinfo.gov/content/pkg/FR-2016-09-30/pdf/2016-22986.pdf*).; National Survey of Early Care and Education Project Team (2022): Hardy, E. Park, J.E. 2019 NSECE Snapshot: Child Care Cost Burden in U.S. Households with Children Under Age 5. OPRE Report No. 2022–05, Washington DC: Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS). *https://www.acf.hhs.gov/opre/report/2019-nsece-snapshot-child-care-cost-burden-us-households-children-under-age-5.;* Scott, E.K., Leymon, A.S., & Abelson M. (2011). Assessing the Impact of Oregon's 2007 Changes to Child-Care Subsidy Policy. Eugene, Oregon: University of Oregon. *https://health.oregonstate.edu/early-learners/research/assessing-impacts-oregon%E2%80%99s-2007-changes-child-care-subsidy-policy.;* Grobe, D., Weber, R., Davis, E. & Scott, E. (2012). Struggling to Pay the Bills: Using Mixed-Methods to Understand Families' Financial Stress and Child Care Costs. *Contemporary Perspectives in Family Research (6),* 93–121. *https://health.oregonstate.edu/sites/health.oregonstate.edu/files/sbhs/pdf/struggling-to-pay-the-bills-using-mixed-methods-to-understand-families-financial-stress-and-child-care-costs.pdf.;* Morrissey, T.W. (2017). ''Child care and parent labor force participation: a review of the research literature.'' *Review of Economics of the Household* 15.1: 1–24. *https://link.springer.com/content/pdf/10.1007/s11150-016-9331-3.pdf.*

[27] Scott, E.K., Leymon, A.S., & Abelson M. (2011). Assessing the Impact of Oregon's 2007 Changes to Child-Care Subsidy Policy. Eugene, Oregon: University of Oregon. *https://health.oregonstate.edu/early-learners/research/assessing-impacts-oregon%E2%80%99s-2007-changes-child-care-subsidy-policy.;* Grobe, D.,Weber, R., & Davis, E. & Scott, E. (2012). Struggling to Pay the Bills: Using Mixed-Methods to Understand Families' Financial Stress and Child Care Costs. *Contemporary Perspectives in Family Research (6),* 93–121. *https://health.oregonstate.edu/sites/health.oregonstate.edu/files/sbhs/pdf/struggling-to-pay-the-bills-using-mixed-methods-to-understand-families-financial-stress-and-child-care-costs.pdf.*

[28] EveryChild California. (April 2, 2023). EveryChild CA Family Fee Survey Results.

[29] Ibid.

[30] Rohacek, M., & Adams, G. (2017). Providers in the child care subsidy system. Washington, DC: Urban Institute. *https://www.urban.org/sites/default/files/publication/95221/providers-and-subsidies.pdf.*

[31] Scott, E.K., Leymon, A.S., & Abelson M. (2011). Assessing the Impact of Oregon's 2007 Changes to Child-Care Subsidy Policy. Eugene, Oregon: University of Oregon. *https://health.oregonstate.edu/early-learners/research/assessing-impacts-oregon%E2%80%99s-2007-changes-child-care-subsidy-policy.;* Grobe, D.,Weber, R., & Davis, E. & Scott, E.. (2012). Struggling to Pay the Bills: Using Mixed-Methods to Understand Families' Financial Stress and Child Care Costs. *Contemporary Perspectives in Family Research (6),* 93–121. *https://health.oregonstate.edu/sites/health.oregonstate.edu/files/sbhs/pdf/struggling-to-pay-the-bills-using-mixed-methods-to-understand-families-financial-stress-and-child-care-costs.pdf.;* Anderson, T. et al. (January 2022). Balancing at the Edge of the Cliff: Experiences and Calculations of Benefit Cliffs, Plateaus, and Trade-Offs. Washington, DC: Urban Institute. *https://www.urban.org/research/publication/balancing-edge-cliff.*

Strengthening CCDF Payment Practices to Child Care Providers and Increasing Families' Options

This final rule will strengthen Lead Agency payment rates and practices to more than 150,000 child care providers to better cover the cost of care, increase the financial stability of child care providers that accept CCDF subsidies, and encourage more providers to accept subsidies. These policies will expand available child care options to parents participating in CCDF so they can find child care that meets their families' needs. Despite the importance of access to high-quality child care to children, families, and communities, there is not enough child care to serve families who need it.[32] A 2018 analysis found that 51 percent of families with children under age 5 lived in a ''child care desert''—an area where there are three times as many children under age 5 than there are spaces in licensed settings.[33] A 2019 analysis of 35 States found only 7.8 million child care slots for the 11.1 million children under the age of 5 with the potential need for child care.[34] Parents have long struggled to find child care that meets their needs, and the decline in child care options, especially family child care homes, has perpetuated the problem. Between 2012 and 2019, the number of family child care providers decreased by 25 percent [35] without a complementary increase in center-based programs.[36]

A key contributor to this lack of supply is that child care providers usually operate with profit margins of less than 1 percent.[37] To remain open, child care providers must keep costs low enough so families are not priced out of care, but because labor is the main business expense, most providers can only remain operational if they pay low wages and offer minimal benefits for this essential and skilled work overwhelmingly done by women and disproportionately by women of color.[38] These working conditions lead to high turnover, with an estimated 26 to 40 percent of the child care workforce leaving their job each year.[39] Children in underserved geographic areas especially have less access to high-quality child care options and parents struggle to find high-quality child care that is reliably available and affordable.[40]

CCDF must do more to help address supply challenges and ensure parents have a wide range of child care choices that meet their needs, a core purpose of the program. The final rule includes key changes to address some of the challenges experienced by families and providers participating in CCDF. The rule: (1) requires Lead Agencies to pay providers prospectively and based on child enrollment to align with generally accepted payment practices in the private market and better reflect the fixed costs of child care; (2) requires Lead Agencies to use some grants and contracts for direct services, at a minimum for children in underserved geographic areas, infants and toddlers, and children with disabilities; and (3) clarifies that Lead Agencies are allowed and encouraged to pay child care providers the full established payment rate, even if it is higher than the price the provider charges privately paying families.

First, the rule requires Lead Agencies use timely and enrollment-based payment practices for child care providers to align with generally accepted payment practices in the private sector. The Act requires States and Territories to certify that ''the payment practices of child care providers in the State that serve children who receive [CCDF] assistance . . . reflect generally accepted payment practices of child care providers in the State that serve children who do not receive [CCDF] assistance . . ., so as to provide stability of funding and encourage more child care providers to serve children who receive [CCDF] assistance . . .'' (42 U.S.C. 9858c(c)(2)(S)). The Act also requires States and Territories to show how they ''provide for timely payment for child care services provided under [CCDF]'' (42 U.S.C. 9858c(c)(4)(B)(iv)). The revisions promulgated by this rule will help account for some of the fixed costs of providing child care, support better provider stability, and increase child care options for families participating in CCDF. Generally accepted payment practices for parents who do not receive subsidies (which are most parents) require a set fee, are based on a child's enrollment, and are paid in advance of when services are provided. This is necessary because the fixed costs of providing child care, including staff wages, rent, and utilities do not decrease when a child is absent and must be budgeted prior to service delivery. The Act requires Lead Agencies to use generally accepted payment practices, because it makes it easier for child care providers to serve children receiving assistance from CCDF and fosters equal access to child care for participating parents, which is a central purpose of the CCDF program. Providers often mention delayed payments and their destabilizing effect on child care operations as a key reason why they do not participate in the CCDF program.[41] But according to FY 2022–2024 CCDF State and Territory Plans, only eight States and Territories pay prospectively and only 36 pay providers based on enrollment. Providers in States that pay based on attendance either absorb the lost revenue associated with a child's occasional absences or choose not to participate in the subsidy system, which limits parent choices. An August 2023 survey of child care providers found 80 percent of child care center directors/administrators and family child care owners/operators who responded to the survey would be more likely to serve families using subsidies if the State paid based on enrollment rather than attendance, and 73 percent said they would be more likely if the State paid prospectively.[42]

Second, the rule requires Lead Agencies to use some grants and contracts for direct child care services to enable CCDF to better address child care

[32] Federal Reserve Bank of St. Louis. The Economic Impact of Child Care by State. *https://www.stlouisfed.org/community-development/child-care-economic-impact.*

[33] Malik, R. et al., (2018). America's Child Care Deserts in 2018. Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/americas-child-care-deserts-2018/.*

[34] Smith, L., Bagley, A., and Wolters, B. (November 2021). Child Care in 35 States: What we know and don't know. Washington, DC: Bipartisan Policy Center.

[35] Datta, A.R., Milesi, C., Srivastava, S., Zapata-Gietl, C. (2021). NSECE Chartbook—Home-based Early Care and Education Providers in 2012 and 2019: Counts and Characteristics. OPRE Report No. 2021–85, Washington DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. *https://www.acf.hhs.gov/opre/report/nsece-hb-chartbook-counts-and-characteristics.*

[36] Datta, A.R., Gebhardt, Z., Zapata-Gietl, C. (2021). Center-based Early Care and Education Providers in 2012 and 2019: Counts and Characteristics. OPRE Report No. 2021–222, Washington DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. *https://www.acf.hhs.gov/sites/default/files/documents/opre/cb-counts-and-characteristics-chartbook_508_2.pdf.*

[37] U.S. Department of the Treasury. (2021). The Economics of Child Care Supply in the United States. *https://home.treasury.gov/system/files/136/The-Economics-of-Childcare-Supply-09-14-final.pdf.*

[38] Ibid.

[39] Ibid.

[40] Ibid.

[41] U.S. Department of Health and Human Services. Office of the Inspector General. (August 2019). States' Payment Rates Under the Child Care and Development Fund Program Could Limit Access to Child Care Providers (Report in Brief OEI–03–15–00170). *https://oig.hhs.gov/oei/reports/oei-03-15-00170.pdf.*

[42] *https://www.naeyc.org/sites/default/files/wysiwyg/user-73607/naeyc_nprm_comments.final.pdf.*

supply issues for participating families. The Act requires States and Territories to offer parents of eligible children the option to either ''enroll such child with a child care provider that has a grant or contract for the provision of such services; or to receive a child care certificate'' (42 U.S.C. 9858c(c)(2)(A)). Grants and contracts represent agreements between the subsidy program and child care providers to designate slots for subsidy-eligible children and are an important tool for building child care supply.[43] However, only 10 States and Territories report using any grants and contracts for direct services, and only 6 States and Territories report supporting more than 5 percent of children receiving subsidy via a grant or contract.[44] Sufficiently funded grants and contracts for direct services are more likely to increase stability for child care providers than certificates, helping them remain in business, and thereby maintaining or increasing the supply of child care.[45] One survey of providers found 80 percent of center-based directors and administrators and family child care owner/operators would be interested in applying for grants or contracts to serve populations identified in the final rule.[46] An evaluation of an infant and toddler contracted slot pilot in Pennsylvania found that participating programs experienced increased classroom quality and had greater financial stability than providers solely paid through certificates. Contracts led to more stable enrollment for infants and toddlers receiving child care subsidies.[47] They also found evidence that providers were better able to hire and retain qualified staff and establish better coordination between local and State systems. Georgia also used grants and contracts to build the supply of care for infants and toddlers. Providers reported an increase in enrollment of children from families who would have normally struggled to pay for care because the program was better able to connect the families with a contract-funded subsidy.[48] They also reported that the higher reimbursement rate paid with the contracts was closer to the true cost of providing care and allowed providers to invest in quality improvements.

The rule specifically requires Lead Agencies to use some grants and contracts for children in underserved geographic areas, infants and toddlers, and children with disabilities—populations that the statute identifies Lead Agencies must develop and implement strategies to increase the supply and quality of care. 42 U.S.C. 9858c(c)(2)(M). Finding care for infants and toddlers and children with disabilities is particularly difficult for parents. Higher operational costs per child, the need for specialized training, and physical space needs generally require additional funding and planning and make supply issues particularly acute. At the same time, these populations constitute a sizable portion of the population of children potentially eligible for CCDF: infants and toddlers constitute about one-third of children receiving CCDF,[49] and 17 percent of children have a developmental disability.[50] For infants and toddlers, the potential demand far exceeds the available supply. A 2020 analysis of 19 States and the District of Columbia, representing close to 40 percent of the U.S. population, found there were at least three infants or toddlers for every child care slot for children under three in 80 percent of the counties analyzed.[51] For children with disabilities, data from the 2016 Early Childhood Program Participation Survey showed that 34 percent of parents of children with disabilities had at least some difficulty finding child care compared to 25 percent of parents of children without disabilities.[52] Despite Lead Agencies' obligation to develop strategies to serve this population, approximately twenty states report serving no children with disabilities.[53]

Third, the rule clarifies that Lead Agencies are allowed and encouraged to pay child care providers the full agency-established payment rate to account for the actual cost of care, even if it is higher than the price the provider charges private pay families. The Act requires States and Territories to ''certify that payment rates for the provision of child care services for which [CCDF] assistance is provided . . . are sufficient to ensure equal access for eligible children to child care services that are comparable to child care services in the State or substate area involved that are provided to children whose parents are not eligible to receive [CCDF] assistance.'' (42 U.S.C. 9858c(c)(4)). States and Territories must also set rates in accordance with market rate surveys that reflect ''variations in the cost of child care services by geographic area, type of provider and age of child,'' and take into consideration ''the cost of providing higher quality child care services that were provided . . . before November 19, 2014.'' (42 U.S.C. 9858c(c)(4)(B)).

Because child care providers' *price* for services reflects what private-pay families enrolling in their programs can afford and not necessarily the (higher) *cost* of providing services, payment rates are artificially constrained by affordability, particularly in low-income neighborhoods. Under CCDF, Lead Agencies set payment rates using a market rates survey or a cost-based alternative methodology, but some Lead Agencies pay below their established rate to match the constrained price a

[43] Child Care Technical Assistance Network. (October 2021). Implementation Guide: Strategies to Support Use of Contracts and Grants for Child Care Slots. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care. *https://childcareta.acf.hhs.gov/sites/default/files/new-occ/resource/files/implementation_guide_use_of_contracts_508.pdf;* Morrissey, T. and Workman, S. (August 4, 2020). Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care. Washington, DC: Center for American Progress. *https://cdn.americanprogress.org/content/uploads/2020/08/03112628/Grants-and-Contracts.pdf.*

[44] *https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-2.*

[45] Slicker, G., Barbieri, C.A., and Hustedt, J.T. (2023) The role of state subsidy policies in early education programs' decisions to accept subsidies: evidence from nationally representative data. Early Education and Development, DOI: 10.1080/10409289.2023.2244859. *https://www.tandfonline.com/doi/full/10.1080/10409289.2023.2244859.;* Weber, R.B. and Grobe, D. (2015), Contracted slots pilot program evaluation. *https://health.oregonstate.edu/sites/health.oregonstate.edu/files/early-learners/pdf/research/contracted_slots_pilot_evaluation_-_executive_summary.pdf;* Giapponi Schneider, K., Erickson Warfield, M., Joshi, P., Ha, Y., & Hodgkin, D. (2017). Insights into the black box of child care supply: Predictors of provider participation in the Massachusetts child care subsidy system. *https://www.sciencedirect.com/science/article/abs/pii/S0190740917300750.*

[46] *https://www.naeyc.org/sites/default/files/wysiwyg/user-73607/naeyc_nprm_comments.final.pdf.*

[47] Dorn, C. (August 2020). Infant and Toddler Contracted Slots Pilot Program: Evaluation Report. Pennsylvania Office of Childhood Development and Early Learning. *https://s35729.pcdn.co/wp-content/uploads/2020/11/IT-Pilot-Evaluation-Report_PA_Final.V2.pdf.*

[48] Sotolongo, J., et al. (May 2017). Voices from the Field: Providers' Experiences with Implementing DECAL's Quality Rated Subsidy Grant Pilot Program. Chapel Hill, NC: Child Trends. *https://www.decal.ga.gov/documents/attachments/VoicesFromtheField.pdf.*

[49] Unpublished FY 2021 ACF Administrative Data.

[50] Cogswell, M.E., Coil, E., Tian, L.H., Tinker, S.C., Ryerson, A.B., Maenner, M.J, Rice, C.E., Peacock, G. (2022). Health Needs and Use of Services Among Children with Developmental Disabilities—United States, 2014–2018. Morbidity and Mortality Weekly Report. 71(12):453–458.

[51] The White House (March 2023). Economic Report of the President. *https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf.*

[52] Novoa, C. (2020). The child care crisis disproportionately affects children with disabilities. Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/child-care-crisis-disproportionately-affects-children-disabilities.*

[53] *https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-21.*

provider charges parents paying privately. Not only does this practice contribute to instability in the child care sector, it also creates pressure on providers to raise rates on private pay families. The rule codifies this existing flexibility to pay above the private rate to encourage more Lead Agencies to adopt this practice, which will promote equal access for participating families, increase parent options in care arrangements, and help increase the number and percentage of children from families with low incomes in high-quality child care settings, all central purposes of the Act.

Easier Enrollment for Families Through Reduced Bureaucracy

Finally, this rule includes changes to encourage easier enrollment and re-enrollment processes for families applying for child care subsidies. First, this rule establishes parameters for Lead Agencies that choose to implement presumptive eligibility with the goal of reducing barriers for Lead Agency uptake for this existing program flexibility and helping more families receive child care assistance faster. The rule also requires Lead Agencies to implement eligibility policies and procedures that minimize disruptions to parent employment, education, or training opportunities. These rules align with section 658E(c)(2)(N) the Act, requiring States and Territories to develop procedures and policies that ''ensure that working parents. . .are not required to unduly disrupt their employment in order to comply with the State's or designated local entity's requirements for redetermination of eligibility for [CCDF] assistance.'' (42 U.S.C. 9858c(c)(2)(N)).

These changes will help address what can be a slow and difficult process for initial CCDF eligibility determination.[54] Burdensome application processes discourage families from applying for child care assistance, delay access to child care, and cause substantial stress to parents.[55] They can also derail or delay employment, education, or training, harm family economic well-being, and lead parents to pay for care that is either unaffordable, unregulated, or lower quality.[56] Evidence suggests presumptive eligibility can be implemented with relatively low levels of financial risk for Lead Agencies, and the potential benefits for families are substantial.[57] Families reported it helped them obtain full verification documents more easily and that providers were more willing to enroll children because payments were already guaranteed.

Flexibility for Tribal Lead Agencies

For the most part, Tribal Lead Agencies are exempt from the new requirements included in this final rule, but the rule includes two important new flexibilities for Tribes. First, it updates the definition for major renovation in a manner that will reduce the types of projects for which Tribal Lead Agencies must submit applications. Second, it provides all CCDF Tribal Lead Agencies the flexibility to waive parent co-payments for all parents receiving CCDF assistance. These exemptions and flexibilities are discussed in Subpart I.

On July 27, 2023, ACF released a Request for Information (RFI) to seek extensive input on whether existing CCDF requirements, regulations, and processes are appropriate for Tribal Nations to implement CCDF in a manner that best meets the needs of the children, families, and child care providers in their Nations and communities and that properly recognizes the principals of strong government-to-government relationships and Tribal sovereignty. The public comment period ended January 2, 2024, and ACF hosted multiple listening sessions and two Tribal consultations to solicit comments. ACF will consider the need for potential further regulatory changes as part of this broader RFI effort.

Effective Dates

This final rule will become effective 60 days from the date of its publication. Compliance with provisions in the rule will be determined through ACF review and approval of CCDF Plans, including CCDF Plan amendments, as well as through federal monitoring, including on-site monitoring visits as necessary.

We recognize that at the time of publication of this final rule, States and Territories are in the process of completing their FFY 2025–2027 CCDF Plans, which are due July 1, 2024. With the issuance of this final rule, any State or Territory that does not fully meet the requirements of these regulations, will need to revise its policies and procedures to come into compliance. We are allowing Lead Agencies to request temporary transitional waivers for up to two years to ensure there is enough time to execute the steps necessary to be in compliance with this final rule. This final rule revises the process to request temporary transitional waivers on the updated provisions in this final rule as described at § 98.19. This waiver authority does not extend past two years. We also note that requests for extensions through legislative or transitional waivers will only be considered for provisions substantively updated in this final rule. ACF will use federal monitoring in accordance with § 98.90.

Tribal Lead Agencies will describe any changes made in response to this final rule in new triennial Plans for FFY 2026–2028, with an effective date of October 1, 2025. Tribes that have consolidated CCDF with other employment, training, and related programs under Public Law 102–477, are not required to submit separate CCDF Plans, but will be required to demonstrate compliance with this final rule in their next Public Law 102–477 Plan submission, along with associated documentation.

Costs, Benefits, and Transfer Impacts

Changes made by this final rule will have the most direct benefit for the nearly 800,000 families and 1.3 million children who use CCDF assistance to pay for child care. Families who receive CCDF assistance will benefit from lower parent co-payments, more parent choice in care arrangements, and simplified eligibility determination processes, which will increase child care access and affordability. Greater access and affordability will improve the ability of families to participate in the labor market and benefit the overall economy. Research has demonstrated that increased access to child care increases maternal labor force participation.[58] In particular, child care subsidies have been found to increase employment among single mothers.[59]

[54] Lee, R., Gallo, K., Delaney, S., Hoffman, A., Panagari, Y., et al. (2022). Applying for child care benefits in the United States: 27 families' experiences. US Digital Response. *https://www.usdigitalresponse.org/projects/applying-for-child-care-benefits-in-the-united-states-27-families-experiences.*

[55] Adams, G., Snyder, K., & Banghart, P. (2008). Designing subsidy systems to meet the needs of families: An overview of policy research findings. Washington, DC: Urban Institute. *https://www.urban.org/research/publication/designing-subsidy-systems-meet-needs-families.*

[56] *Ibid.*

[57] *Ibid.*

[58] Morrissey, T.W. (2017). ''Child care and parent labor force participation: a review of the research literature.'' *Review of Economics of the Household* 15.1: 1–24. *https://link.springer.com/content/pdf/10.1007/s11150-016-9331-3.pdf.*

[59] Blau, D., Tekin, E. (2007). The determinants and consequences of child care subsidies for single mothers in the USA. Journal of Population Economics 20, 719–741. *https://doi.org/10.1007/s00148-005-0022-2.;* Morrissey, T.W. 2017. Child care and parent labor force participation: a review of the research literature. Review of Economics of the Household 15, 1–24. *https://doi.org/10.1007/s11150-016-9331-3.;* Shonkoff, J. P., & Phillips, D. A. (Eds.). (2000). *From neurons to neighborhoods: The science of early childhood development.* National

Continued

Providers will benefit from this rule's payment practice requirements that support providers' financial stability, including prospective payments based on enrollment and payments that more closely reflect the cost of providing high-quality care, which could lead to higher wages for providers and their staff.[60] This rule will also yield benefits in terms of child development outcomes. The provisions in this rule expand child care access and some children who might have not received subsidized care under the current rule (*e.g.,* those whose parents could not pay the co-pay) would receive subsidized care under this new final rule. For these children, they are likely to receive higher quality care than they otherwise would have. Research demonstrates clear linkages between high quality child care and positive child outcomes, including school readiness, social-emotional outcomes, educational attainment, employment, and earnings.[61]

The cost of implementing changes made by this rule would vary depending on a Lead Agency's specific situation and implementation choices. ACF conducted a regulatory impact analysis (RIA) to estimate costs, transfers, and benefits of provisions in this final rule, considering current State and Territory practices. Due to limitations in data, we did not include Tribal Lead Agency practices in the RIA. We evaluated major areas of policy change, including reduced parent co-payments, paying providers based on enrollment, paying providers prospectively, paying providers the full subsidy rate, presumptive eligibility for families, and streamlined family eligibility processes. In response to feedback received during the public comment period, we have further refined these estimates for the final rule, making key changes including adding a systems' cost to account for necessary information technology changes and updating calculations to use the most recent CCDF administrative data. Due to limited data related to children with disabilities in the relevant policy areas, for the purposes of this RIA, we did not conduct separate cost estimates specific to children with disabilities.

Based on the calculations in the RIA, we estimate the quantified annualized impact of the rule to be about $206.6 million in transfers, $13.1 million in costs, and $15.3 million in benefits. Further detail and explanation can be found in the RIA.

Severability

The provisions of this final rule are intended to be severable, such that, in the event a court were to invalidate any particular provision or deem it to be unenforceable, the remaining provisions would continue to be valid. The changes address a variety of issues relevant to child care. None of the provisions in the final rule contained herein are central to an overall intent of the final rule, nor are any provisions dependent on the validity of other, separate provisions.

IV. Development of Regulation

Throughout the period since 2016 when the last CCDF Rule was published, HHS has learned from Lead Agencies, families, and child care providers; assessed the evolving child care landscape; examined the successes and challenges in the reauthorized Act's implementation; and tracked the impact and implications of the COVID–19 public health emergency on the child care sector. The policies in this final rule are informed by these lessons and are designed to improve on the work of the past and build a stronger CCDF program that more effectively supports the development of children, the economic well-being of families, and the stability of child care providers.

ACF published a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 13, 2023, (88 FR 45022) proposing revisions to CCDF regulations. We provided a 45-day comment period during which interested parties could submit comments in writing electronically.

ACF received 1,796 comments, of which 1,639 were unique comments, on the proposed rule (public comments on the proposed rule are available for review on *www.regulations.gov*), including comments from state human services and educational agencies, Tribal Nations and Tribal organizations, national, state, and local early childhood and family-focused organizations, including, child care resource and referral agencies, faith-based organizations, provider organizations, as well as labor unions, child care providers, parents, individual members of the public, and members of the U.S. Congress. We were pleased to receive comments from 29 State and local governments and 13 Tribes and Tribal organizations. Some commenters coordinated comments and policy recommendations so that their comments were signed by multiple entities, and there were some member organizations that each submitted the same comments separately. We also processed form comments from hundreds of individuals, including parents and child care staff. Public comments informed the development of content for this final rule.

Changes in this final rule affect the State, Territory, and Tribal agencies that administer the CCDF. ACF has and will continue to consult with State, Territory, and Tribal agencies and provide technical assistance throughout implementation.

This final rule maintains the structure and organization of the current CCDF regulations. The preamble in this final rule discusses the changes to current regulations and contains certain clarifications based on ACF's experience in implementing the prior final rules. Where language of previous regulations remains unchanged, the preamble explanation and interpretation of that language published with all prior final rules also is retained, unless specifically modified in the preamble to this rule. (See 57 FR 34352, Aug. 4, 1992; 63 FR 39936, Jul. 24, 1998; 72 FR 27972, May 18, 2007; 72 FR 50889, Sep. 5, 2007; 81 FR 67438, Sept. 30, 2016).

V. General Comments and Cross-Cutting Issues

This final rule includes substantive changes in several key policy areas in the CCDF regulations. We received comments on all the significant proposed changes and made some revisions in this final rule in response to these comments. We discuss specific comments in the section-by-section analysis later in this final rule.

The vast majority of the 1,639 unique public comments were supportive of the proposals and validated their future benefits to children, families, and child care providers. Each major proposal received much more support than opposition. Commenters strongly supported the need to lower child care

Academy Press.; Herbst, C. (2017). Universal Child Care, Maternal Employment, and Children's Long-Run Outcomes: Evidence from the US Lanham Act of 1940. Journal of Labor Economics, 35 (2). *https://doi.org/10.1086/689478.*

[60] Borowsky, J., et al (2022). An equilibrium model of the impact of increased public investment in early childhood education. Working Paper 30140. *http://www.nber.org/papers/w30140.*

[61] Deming, D. 2009. ''Early Childhood Intervention and Life-Cycle Skill Development: Evidence from Head Start.'' American Economic Journal: Applied Economics, 1 (3): 111–34.; Duncan, G.J., and Magnuson, K. 2013. ''Investing in Preschool Programs.'' Journal of Economic Perspectives, 27 (2): 109–132; Heckman, J., and Kautz, T. ''Fostering and Measuring Skills Interventions That Improve Character and Cognition.'' In The Myth of Achievement Tests: The GED and the Role of Character in American Life. Edited by James J. Heckman, John Eric Humphries, and Tim Kautz (eds). University of Chicago Press, 2014. Chicago Scholarship Online, 2014. *https://doi.org/10.7208/chicago/9780226100128.003.0009.;* Weiland, C., Yoshikawa, H. 2013. ''Impacts of a Prekindergarten Program on Children's Mathematics, Language, Literacy, Executive Function, and Emotional Skills.'' Child Development, 86(6), 2112–2130.

costs for families, noting the importance of ensuring co-payments are not a barrier to child care access. Commenters also strongly supported the need for CCDF payment practices to providers that would better cover the cost of care, help stabilize operations, and incentivize child care providers to accept families with child care subsidies.

Some supporters also expressed concerns about potential unintended consequences of the rule without additional resources, called for additional guidance and technical assistance on the proposed changes, recommended consideration of the implementation timeline, and stressed the need for major long-term funding increases for child care beyond regulatory changes. Some supporters expressed concerns that without additional investments to accompany a final rule, the costs of the proposal inadvertently could be passed on to child care providers or result in fewer families receiving subsidies, particularly in the context of supplemental COVID–19 funding coming to a close.

We seriously considered concerns about cost and recognize that the final rule contains provisions that will require some States and Territories to direct CCDF funds to implement specific provisions. Many Lead Agencies have already implemented some of the provisions in this final rule. In addition, each year, approximately $11.6 billion in federal funding is allocated for CCDF. The activities to implement requirements in this final rule are all allowable costs in the CCDF program. Changes made by this final rule represent a commitment to ensuring the goals of the 2014 reauthorization of the Act are realized, including making child care more affordable and accessible to families and improving stability for child care providers. ACF will continue our regular work of supporting CCDF Lead Agencies through guidance and technical assistance in partnership with the CCDF-funded Child Care Technical Assistance Network.

Several commenters noted that Lead Agencies will need time to implement the requirements included in this final rule, including time to take administrative or legislative actions, and some commenters noted the potential misalignment between the timing of publication of this final rule and submission to OCC of the FFY 2025–2027 CCDF State and Territory Plans. Some commenters suggested delaying the FFY 2025–2027 CCDF Plans or having an additional comment period to cover an amendment process for the rule's requirements. ACF is aware that some provisions in the final rule will require a range of internal processes for Lead Agencies before full implementation and that other provisions will require IT and data system changes that can take some time. Therefore, we are allowing Lead Agencies to request temporary transitional waivers for extensions of up two years if needed to implement provisions of the rule. The waivers are discussed in greater detail elsewhere in this preamble.

We considered several options to align the timing of the FFY 2025–2027 State and Territory Plans and the effective and compliance dates of this final rule. We have chosen not to adjust the CCDF Plan timeline because all changes included in this final rule have been incorporated into the forthcoming final FFY 2025–2027 CCDF State and Territory Plan Preprint—which outlines the required elements of a plan submission. The FFY 2025–2027 CCDF State and Territory Plans must be submitted to ACF by July 1, 2024 and will be effective October 1, 2024.

Finally, we received comments from several national organizations focused on school-age and out-of-school time care, requesting we include additional data related to school-age care. We have incorporated this data in the preamble.

VI. Section-by-Section Discussion of Comments and Regulatory Provisions

We received comments about changes we proposed to specific subparts of the regulation. Below, we identify each subpart, summarize the comments, and respond to them accordingly.

Subpart A—Goals, Purposes, and Definitions

§ 98.2 Definitions

The final rule includes three technical changes to definitions at § 98.2 and the addition of two new definitions. In this section, italics indicate defined terms.

Major Renovation

This final rule defines *major renovation* as any renovation with a cost equal to or exceeding $350,000 in federal CCDF funds for child care centers and $50,000 in federal CCDF funds for family child care homes, with annual adjustments for inflation posted on the OCC website. Renovations that exceed these thresholds but do not make significant changes to the structure, function, or purpose of the child care facility while improving the health, safety and/or quality of child care services are considered minor renovation. This definition applies to all CCDF Lead Agencies and will be used to determine which projects are considered major renovation and which are therefore not permitted with State or Territorial CCDF or may be permitted for Tribal Lead Agencies with prior approval from ACF in accordance with § 98.84(b). As before, CCDF prohibits States and Territories from using CCDF funds for *major renovation.* Tribes may continue to request to use their CCDF funds for construction and major renovation (Section 658O(c)(6), 42 U.S.C. 9858m(c)(6)). In response to comments described below, this definition provides greater flexibility to Lead Agencies than the definition proposed in the NPRM.

Comment: A few commenters were fully supportive of the original proposal and noted it would provide a more informative definition, but most commenters on this proposal expressed support while also requesting more clarity and raising significant concerns about regional variations in construction costs, focusing on the impact of the change on Tribal Lead Agencies. They noted that the previous definition provided needed flexibility for Tribal programs to address their facility needs.

Response: We retain the proposed change to the definition of *major renovation* to be based on the cost of renovations for better clarity and consistent implementation but have incorporated components from the prior definition to better distinguish between minor and major renovations. The previous definition for *major renovation,* established in the 1998 CCDF regulation, focused exclusively on the type of change to the facility.[62] The definition from the 1998 CCDF rule has led to confusion in the field, insufficient flexibility and inconsistent guidance for Lead Agencies and child care providers.

The final rule accounts for Tribal comments on the benefits of keeping the description of structural change from the previous definition by taking a combined approach for the definition, such that renovations exceeding the cost threshold that do not make changes to the structure, function, or purpose of the child care facility while improving the health, safety and/or quality of child care services are still considered minor renovations. This will provide greater flexibility than what we originally proposed to properly address geographical differences among Tribal Lead Agencies and to help avoid increased burden for Tribal Lead Agencies making minor renovations that are costly due to higher-than-average

[62] 63 FR 39980 (*https://www.govinfo.gov/content/pkg/FR-1998-07-24/pdf/98-19418.pdf*).

construction prices in their region.[63] Moreover, in general, this rule provides greater flexibility for Tribal Lead Agencies to make needed renovations by eliminating the need for construction applications in some instances.

This final rule also provides more flexibility for States and Territories to use CCDF funds for allowable minor renovations. This clarification may be particularly helpful for Territories who only recently started receiving mandatory funds and may be looking for opportunities to use those funds to increase and improve the supply of child care in their areas.

Comment: Some commenters noted that the proposed threshold for major renovation of $250,000 for child care centers and $25,000 for family child care homes was too low and did not account for geographic variations in construction and materials costs, suggesting specific higher thresholds, including $350,000 for centers and $50,000 for family child care homes. While commenters expressed concerns about relying on a specific threshold, they were generally supportive of the proposal for annual adjustments to the threshold based on economic indicators.

Response: In response to comments, we increased the thresholds from the levels proposed in the NPRM ($250,000 for centers and $25,000 for family child care providers) to $350,000 for centers and $50,000 family child care providers in the final rule. We retained the proposal to adjust the thresholds annually based on inflation and post that information on the OCC website.

Comment: A few commenters expressed concern about the proposed definition of collective renovation proposed in the NPRM, which stated, ''Renovation activities that are intended to occur concurrently or consecutively, or altogether address a specific part or feature of a facility, are considered a collective group of renovation activities.'' These commenters argued that applying the proposed renovation thresholds to collective renovations could undermine development and financial planning and needed a more nuanced approach.

Response: We appreciate commenters providing additional information and input on defining collective renovations in the regulatory language. Given the complexity of defining collective renovations and the potential unintended consequences, the final rule does not include a definition of collective renovation.

[63] *https://www.cbre.com/insights/reports/united-states-construction-market-trends.*

State

The final rule amends the definition of *State* to mean ''any of the States and the District of Columbia and includes Territories and Tribes unless otherwise specified.'' The change conforms this definition with the new definition of *Territory* included in this final rule. This change is technical and does not make substantive changes to requirements for States, Territories, or Tribes.

Comment: A commenter noted that Tribes should not be included in the definition of *State.*

Response: We share the commenter's concern with including Tribes in the definition of *State.* However, we are declining to remove Tribes from the definition of *State* at this time. Removing Tribes from the definition of State may impact the requirements for Tribal Nations, and we do not want to make such policy changes without the opportunity for public comment. As discussed earlier, ACF released a Tribal RFI on July 27, 2023 to solicit extensive feedback on the regulations and processes for Tribal CCDF programs. As ACF considers the information gathered through the RFI process, we may consider potential regulatory changes, including revising the definition of *State.*

Territory

This final rule adds a definition of *Territory* to mean ''the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.'' This new definition aims to streamline the CCDF regulations, particularly where Territory funding and allocations are discussed but does not change policy requirements for Territories. We did not receive comments on this change and have retained the definition as proposed.

Territory and Tribal Mandatory Funds

This final rule updates definitions to include the terms *Territory mandatory funds* and *Tribal mandatory funds* to reflect changes made to CCDF mandatory and matching funds in the ARP Act of 2021 (Pub. L. 117–2). Section 9801 of the ARP Act amended section 418 of the Social Security Act (42 U.S.C. 618(a)(3)) by permanently increasing the matching funding for States (including the District of Columbia), changing the tribal set-aside for mandatory funds from between 1 and 2 percent of funds to a flat $100 million each fiscal year, and appropriating CCDF mandatory funds ($75 million) to Territories for the first time.[64] To align the CCDF regulation with the new Territory mandatory funding statute, the final rule adds a new definition for *Territory mandatory funds* at § 98.2 to mean ''the child care funds set aside at section 418(a)(3)(C) of the Social Security Act (42 U.S.C. 618(a)(3)(C)) for payments to the Territories'' and revises the definition for *Tribal mandatory funds* to be ''the child care funds set aside at section 418(a)(3)(B) of the Social Security Act (42 U.S.C. 618(a)(3)(B)) for payments to Indian Tribes and tribal organizations.'' We did not receive comments on this technical change and have retained the definition as proposed.

Subpart B—General Application Procedures

Subpart B of the regulations describes some of the basic responsibilities of a Lead Agency as defined in the Act. A Lead Agency serves as the single point of contact for the child care subsidy program, determines the basic use of CCDF funds and priorities for spending CCDF funds, and promulgates the rules governing overall administration and oversight.

Under Subpart B, this final rule makes changes to CCDF Plan provisions, including related to assessing child care supply and parameters for requesting temporary extensions for certain provisions.

§ 98.13—Applying for Funds

This final rule includes a technical change to the regulatory citation at § 98.13(b)(4) from 45 CFR 76.500 to 2 CFR 180.300 to accurately reflect current regulations at 2 CFR 180.300 governing grants management. We did not receive comments on this change.

§ 98.16 Plan Provisions

Submission and approval of the CCDF Plan is the primary mechanism by which ACF works with Lead Agencies to ensure program implementation meets federal regulatory requirements. All provisions required to be included in the CCDF Plan are outlined in § 98.16. The additions and changes to this section correspond to changes throughout the regulations, which provide explanation and responses to comment for later in this rule.

Technical Change. This final rule includes a technical change at § 98.16(ee) as redesignated. The previous regulatory language incorrectly said, ''verity eligibility.'' This was an

[64] For additional information about changes made to CCDF mandatory and matching funds in the ARP Act of 2021, see CCDF–ACF–IM–2021–04 *https://www.acf.hhs.gov/occ/policy-guidance/arp-act-increased-mandatory-and-matching-funds.*

error, and the final rule is corrected to read ''verify eligibility.'' We did not receive comments on this change.

Presumptive Eligibility. The final rule adds a provision at new paragraph § 98.16(h)(5) to require Lead Agencies to describe if they have implemented presumptive eligibility and, if applicable, to describe their presumptive eligibility policies and procedures, and how they ensure minimal barriers for families and safeguard funds for eligible children. The NPRM proposed additional reporting components at § 98.16(h)(5). This final rule keeps the reporting requirement but includes it as part of the ACF–800 annual administrative data report at § 98.71 instead of under the CCDF Plan. Comments are addressed later under the related requirement at § 98.21(e).

Supply of Child Care. The final rule amends § 98.16(x) and adds new paragraphs at (y) and (z) to clarify section 658E(c)(2)(M) of the Act (42 U.S.C. 9858c(c)(2)(M)), which addresses the lack of supply of child care for certain populations, how Lead Agencies will identify shortages, and how grants or contracts will be used. The final rule separates former paragraph (x) into three provisions to better convey data requirements and strategies to meet the statutory requirement for Lead Agencies to take steps to increase the supply of child care services for children in underserved geographic areas, infants and toddlers, children with disabilities, and children who receive care during nontraditional hours. At revised paragraph (x), we continue to require Lead Agencies to include in their CCDF Plans a description of the supply of care relative to the population of children requiring care regardless of subsidy participation, including specifically care for infants and toddlers, children with disabilities as defined by the Lead Agency, children who receive care during nontraditional hours, and underserved geographic areas. Lead Agencies must also list the data sources used to identify the shortages.

At new paragraph (y), the final rule requires Lead Agencies to describe their strategies and actions to address supply shortages identified in paragraph (x) and specifically to improve parent choice for families eligible to participate in CCDF, including for care during nontraditional hours (y)(1), infant and toddler care (y)(2), and care for children with disabilities (y)(3), and in underserved geographic areas (y)(4). This description must include the Lead Agency's method for tracking progress to increase the supply and support parental choice for families eligible for CCDF. Supply building for each of these types of care is specifically required by the statute because of the high need and, as the final rule reinforces, states must take steps to ensure these populations have access to child care.

At new paragraph (z), the final rule requires Lead Agencies to describe how they will use grants or contracts to build supply for children participating in CCDF in underserved geographic areas, for infants and toddlers, and for children with disabilities. The final rule makes clear in paragraph (y)(1) that Lead Agencies must increase the supply of nontraditional hour care for children participating in CCDF, but paragraph (z) of this section and § 98.30(b) do not require Lead Agencies to use grants or contracts as a mechanism for building supply for this type of care.

This final rule also adds paragraph (aa) to require Lead Agencies to provide a description of their activities to improve the quality of child care services for children in underserved geographic areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours. This is an existing requirement that was previously included in paragraph (x) of this section.

Comments: Commenters were supportive of collecting additional information and data on the supply of available child care, especially to identify the supply shortages that will inform the use of grants or contracts to increase supply.

Response: Lead agencies need clear data and strategies to address gaps in the supply of child care. Therefore, we have revised (x) and (y) to collect additional information about the data States and Territories use to identify supply shortages and the strategies used to address them and added (z) to specifically address how some of these supply shortages will be addressed through grants and contracts. This final rule will allow Lead Agencies and ACF to better identify supply shortages and determine how Lead Agencies are addressing them through various methods, including with grants or contracts. In agreement with commenters, we revised the proposed provisions to require that Lead Agencies assess the need for care among the subgroups identified (*i.e.,* children in underserved geographic areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and those needing care during nontraditional hours) and then determine what proportion of that need for children in underserved geographic areas, infants and toddlers, and children with disabilities would be served with grants or contracts. As stated, Lead Agencies may also use this data to use contracts or grants for those families who would benefit from nontraditional hour care.

Comments: Some commenters were concerned the proposed removal of ''If the Lead Agency chooses to employ grants and contracts to meet the purposes of this section, the Lead Agency must provide CCDF families the option to choose a certificate for the purposes of acquiring care'' at § 98.16(x) meant that ACF intended to give preference to the use of grants or contracts over certificates.

Response: We appreciate commenters noting the sentence was removed in the NPRM. This omission was an error, and in response to these comments, ACF has added language at § 98.16(z). The regulations do not give preference to the use of grants or contracts over certificates. The final rule expands parents' options by requiring some usage of grants or contracts for direct services.

§ 98.19 Requests for Temporary Waivers

In response to comments expressing concerns Lead Agencies would not be able to implement this rule's changes within the 60-day effective date, this final rule amends the temporary *transitional and legislative waivers* at § 98.19(b)(1), which are authorized by section 658I(c) of the Act (42 U.S.C. 9858g(c)). The rule extends the waivers at (i) from a one-year initial period to up to a two-year period and amends (ii) to specify that the *transitional and legislative waivers* cannot be extended and are limited to two years. The final rule also revises § 98.19(f) to clarify that waiver extensions only apply where permitted. These revisions do not change the existing parameters associated with the *transitional and legislative waivers,* including that waivers must be approved by the Secretary and are conditional and dependent on progress towards implementation of the changes included in this final rule and should be narrowly targeted to those provisions with a specific legislative or administrative barrier. ACF expects that such requests will be limited in scope and tied to a specific timeline for implementation. Lead Agencies will be expected to demonstrate they have a plan to implement the requirement for which they are granted a waiver and must provide regular progress updates.

We emphasize that Lead Agencies are expected to move quickly to implement the critical policy changes included in

this final rule. Parents urgently need relief from high co-payments and more child care options and child care providers urgently need more stabilizing payments and practices. However, we are allowing for the use of *transitional and legislative waivers* for the new provisions because we recognize that some changes will require legislative, regulatory changes, and/or IT systems investments that can delay full implementation. As noted above, *transitional and legislative waivers* will only be considered for changes made in this final rule.

Subpart C—Eligibility for Services

This subpart establishes parameters for Lead Agency child eligibility determination and re-determination procedures. This final rule includes changes related to incorporating additional children into the family, presumptive eligibility, subsidy enrollment and applications, and verifying CCDF eligibility using other programs.

§ 98.21 Eligibility Determination Processes

Additional Siblings. This final rule clarifies at § 98.21(d) that the minimum 12-month eligibility requirement described in § 98.21(a) applies when children are newly added to the case of a family already participating in the subsidy program. This is not a new policy: Section 658E(c)(2)(N) (42 U.S.C. 9858c(c)(2)(N)) of the Act and § 98.21(a) do not provide exceptions to the 12-month minimum eligibility requirement. However, the lack of clarity in the 2016 final rule created confusion for Lead Agencies and inconsistent implementation leading to additional children (*e.g.,* newborn or school age child needing after school care) in the family sometimes receiving less than 12 months of care before redetermination. The final rule addresses the confusion around the policy. A conforming change at § 98.16(h)(4) requires Lead Agencies to describe their policy related to additional children in the CCDF Plan.

In cases where multiple children in the same family have initial eligibility determined at different points in time, we encourage Lead Agencies to align eligibility periods to the new child's eligibility period so that all the children's re-determinations can occur at the same point in time to limit burden on the family and the Lead Agency. This alignment can be done by extending the eligibility period for the existing child or children beyond 12 months. Lead Agencies are not required to conduct a full eligibility determination when adding an additional child to the family's case and recommends the Lead Agency leverage existing eligibility verification about the family and require only necessary information about the additional child (*e.g.,* proof of relationship, provider payment information).

Comment: Most commenters on this provision endorsed ACF's recommendation to align the eligibility periods of all the family's children to the additional child's eligibility period so re-determinations can occur at the same point in time. A few expressed concerns about logistical barriers and technical changes required for systems to track eligibility at the child-level rather than the family-level. In addition, one Lead Agency asked for clarification of the expectations of this policy.

Response: We are encouraged that most commenters on this proposed change endorsed extending the eligibility period for children in a family already receiving child care subsidies to align with an additional child's eligibility period. Under the Act in Section 658E(c)(2)(N)(i), once determined eligible, children must receive a minimum of 12 months of child care services, unless family income rises above 85 percent of state median income (SMI) or, at Lead Agency option, the family experiences a non-temporary cessation of work, education, or training. Lead Agencies that implement policies that result in eligibility periods of less than 12 months for additional children would be out of compliance with the minimum 12-month eligibility requirement. We have made no change to the proposed language.

Lead Agencies have the flexibility to establish eligibility periods longer than 12 months, a flexibility that allows the eligibility period for existing children to align with an additional child's eligibility period. Alternatively, Lead Agencies may track separate eligibility periods for each individual child in the family receiving child care subsidies, though ACF discourages this approach because it can confuse families and be administratively burdensome for families, providers, and Lead Agencies.

Comment: Commenters supported our recommendation to leverage existing family information to verify an additional child's eligibility for child care subsidies.

Response: As we described in the proposal, our intention is to reduce the administrative burden for families and Lead Agencies. We encourage Lead Agencies to implement additional policies that require only the minimum amount of information from families to verify an additional child's eligibility. Lead Agencies may assume that family information collected at the time of an existing child's eligibility determination (*e.g.,* family income, working or attending job training or educational program) applies to an additional child's eligibility.

Comment: Commenters supported adding the requirement for Lead Agencies to describe their additional child policies in their triennial CCDF Plans.

Response: We agree that including a description of additional children or sibling policies in the CCDF Plans will lead to more transparency, more consistent implementation, and reduce confusion among families, providers, and Lead Agencies. No changes were made to the proposed language.

Presumptive Eligibility. This final rule adds a provision at § 98.21(e) to clarify that, at a Lead Agency's option, a child may be considered presumptively eligible for subsidy prior to full documentation and verification of the Lead Agency's eligibility criteria and eligibility determination. Presumptive eligibility is an important tool Lead Agencies can use to reduce burden on families and ensure timely access to reliable child care assistance. At least six CCDF Lead Agencies currently allow presumptive eligibility. The rule makes changes to encourage more Lead Agencies to implement presumptive eligibility by improving clarity about CCDF rules, including that payments made with CCDF funds are allowable for any child ultimately determined eligible except in cases of fraud or intentional program violations.

Therefore, this final rule clarifies that Lead Agencies may define a minimum presumptive eligibility criteria and verification requirement for considering a child eligible for child care services for up to three months, while full eligibility verification is underway. To be determined presumptively eligible, a child must be plausibly assumed to meet each of the basic federal requirements, and at the Lead Agency's option, the basic requirements defined in the Lead Agency's CCDF Plan, in accordance with § 98.20 (*i.e.,* age; income; qualifying work, education, or training activity or receiving or needing to receive protective services; and child citizenship). Lead Agencies have the flexibility to collect minimal information to determine presumptive eligibility and are not required to fully verify the simplified eligibility information at the time of presumptive eligibility determination.

The final rule further specifies that federal CCDF payments may be made

for presumptively eligible children and those payments, up to the point of final eligibility determination, will not be considered an error or improper payment if a child is ultimately determined to be ineligible and will not be subject to disallowance, except in cases of fraud or intentional program violation so long as the payment was not for a service period longer than the period of presumptive eligibility. Lead Agencies adopting presumptive eligibility are required to implement a minimum verification process that incorporates criteria that reduces the likelihood of error and fraud. A conforming change at § 98.71(b)(5) requires Lead Agencies implementing presumptive eligibility to track and report in their annual aggregate administrative report the number of presumptively eligible children ultimately determined to be fully eligible, the number for whom the family does not complete the documentation for full eligibility verification, and the number who turn out to be ineligible. We recommend Lead Agencies use these and other sources of data to ensure funds are safeguarded for eligible children and negative impacts on providers are minimized. In addition, the final rule includes a conforming change at § 98.16(h)(5) requiring Lead Agencies to describe their presumptive eligibility policies and procedures in their CCDF Plans, including information on how they ensure minimal barriers for families and safeguard funds for eligible children.

The change at § 98.21(e) allows Lead Agencies to use presumptive eligibility to provide quicker access to child care assistance for families, while reducing perceived financial risk and administrative burden for the Lead Agency by clarifying that CCDF funds may be used to cover presumptive eligibility payments if appropriate safeguards are in place. This policy further reduces financial risk by requiring Lead Agencies to limit the presumptive eligibility period to three months, to set presumptive eligibility criteria and minimum verification requirements that ensure families receiving care during a period of presumptive eligibility are feasibly eligible and minimize the likelihood that they are later found to be ineligible for CCDF, and to track the number of families who do not submit documentation and both the number of children ultimately determined eligible and ineligible. We note that the three-month period is a maximum presumptive eligibility period. Lead Agencies may establish presumptive eligibility policies for shorter periods and establish distinct periods for families to submit documentation and for Lead Agencies to process applications, provided that the combined duration does not exceed three months. Lead Agencies must end assistance for families once they are determined to be ineligible, even if that determination is completed in under three months.

As part of the proposed changes associated with implementing presumptive eligibility, the NPRM proposed adding a new paragraph at § 98.21(a)(5)(iv) that included a final determination of ineligibility after an initial determination of presumptive eligibility as one of the limited reasons a Lead Agency may choose to end assistance before the end of the 12-month eligibility period. We have not included this change in the final rule. As proposed, this language suggested that it was Lead Agency option whether to terminate assistance for a child once they were found ineligible. Rather, as stated above, Lead Agencies must end federal CCDF assistance once a child is determined to be federally ineligible according to § 98.21(a).

Effective internal controls around presumptive eligibility processes are important to safeguard funds for CCDF eligible children. As described in § 98.21(e)(5), when a Lead Agency is under a corrective action plan for error rate reporting, ACF will consider contextual factors around the error rate findings and other sources of information to determine if the Lead Agency can continue to use CCDF funds for direct services under presumptive eligibility. ACF recommends that Lead Agencies have a continuous quality assurance process to ensure their presumptive eligibility policies meet the needs of their eligible population while also ensuring effective internal controls.

When children are newly added to the case of a family already participating in the subsidy program (*e.g.,* new siblings) as discussed at § 98.21(d), Lead Agencies may implement presumptive eligibility for the additional child while waiting for necessary additional information (*e.g.,* proof of relationship, provider payment information), but, as discussed earlier, ACF recommends that Lead Agencies leverage existing family eligibility verification as much as possible to determine the additional child's presumptive and full eligibility and add the additional children to the program.

Comment: Most comments received on this proposal supported the presumptive eligibility provisions. Some commenters requested ACF clarify if the intent of presumptive eligibility is a strategy to reduce stress for families already enrolled or to increase the number of families entering the subsidy system. A few commenters opposed the proposal due to concerns about limited funding and supply, as well as increased work for eligibility staff.

Response: We are pleased by the support for the presumptive eligibility provisions. The primary intention of presumptive eligibility policies is to minimize family burden to quickly access child care services for children who are feasibly federally eligible for CCDF. We understand that Lead Agencies will need to consider potential benefits and costs when deciding whether to institute a presumptive eligibility policy and when crafting such policies. As a reminder, Lead Agencies are not required to adopt presumptive eligibility, and, for those who do, there are significant flexibilities to establish specific policies and procedures, as discussed in more detail below. As stated before, there is evidence of the substantial benefit to families if Lead Agencies implement presumptive eligibility, and the modifications to this policy in the final rule are meant to ensure that the level of risk to the Lead Agency is minimal in doing so. Therefore, Lead Agencies are encouraged to consider presumptive eligibility policies among other strategies to reduce barriers to enrollment, particularly for vulnerable populations, including families experiencing homelessness.

Comment: We requested comment on whether three months was an appropriate length of time for presumptive eligibility. We also asked for data on the average amount of time it currently takes to process applications. We received many comments endorsing three months as an appropriate length of time. One commenter indicated that 90 days for verification seemed too long and recommended 60 days as a more reasonable timeframe, but also acknowledged that some situations including self-employment and homelessness may warrant more time for verifications. One State Lead Agency recommended flexibility to determine an appropriate length up to three months. Two commenters recommended a timeline for families to submit documentation to be separate from a timeline for Lead Agencies to process applications. Data received around the average amount of time taken to process applications was varied: estimates ranged from one

month, two months, or more to process applications.

Response: We appreciate commenters providing data and support for the proposed timeframe and have decided to retain the three-month presumptive eligibility period. If a Lead Agency chooses to allow presumptive eligibility, they may establish shorter timeframes, but cannot exceed three months. ACF encourages Lead Agencies to consider the timing for the families they serve to submit documentation and for application processing when making decisions about the total length of time within a three-month period they would like to establish for their presumptive eligibility policies and processes.

Comment: Multiple commenters endorsed allowing Lead Agencies flexibilities for implementing presumptive eligibility, including defining criteria for awarding presumptive eligibility and setting a period shorter than three months. Other commenters argued that presumptive eligibility should be a requirement, not a state option. Other commenters expressed concerns about unintended consequences on other policies or processes, including concerns about existing wait times that approach the three-month limit for presumptive eligibility and enrollment in other benefits programs.

Response: We agree with commenters that Lead Agencies should have flexibility in whether and how they implement presumptive eligibility and have kept these flexibilities in the final rule. While the potential benefit to families could be substantial with its adoption, Lead Agencies are not required to use presumptive eligibility and will not be subject to penalties if they do not offer it. Lead Agencies also have the flexibility to define the documentation and verification necessary to determine a child's presumptive eligibility in such a way to increase the likelihood that eligible families are receiving presumptive eligibility. For example, Lead Agencies may choose to use eligibility criteria for a family's enrollment in another benefits program as verification for presumptive eligibility for CCDF benefits (see a discussion of how enrollment in other benefits programs applies to full eligibility verification below).

Lead Agencies also have flexibility to establish the duration of presumptive eligibility, provided it does not extend beyond 3 months, or how frequently a family could be approved for presumptive eligibility. Much like the flexibilities for full eligibility determination, Lead Agencies have the flexibility of defining when presumptive eligibility begins, such as allowing presumptive eligibility on the date it is determined or on the date that the child care services begin. Lead Agencies also have flexibility on for whom they allow it (*e.g.,* children with disabilities, children receiving or needing to receive protective services, other priority populations), though we would recommend that Lead Agencies thoughtfully consider why presumptive eligibility would be allowed for some groups and not others.

We understand several Lead Agencies already use presumptive eligibility, and our intention is not to require burdensome changes to existing presumptive eligibility policies. However, we do expect that Lead Agencies implementing presumptive eligibility, both those with new and existing policies, regularly evaluate the effectiveness of their presumptive eligibility policies and employ the flexibilities in such a way to ensure that CCDF funding is safeguarded for eligible children.

Comment: Multiple commenters endorsed the requirement to track and assess the number of presumptively eligible children who are ultimately determined ineligible as a commitment to accountability and continuous improvement. A few commenters recommended also requiring Lead Agencies to track the number of presumptively-eligible families who do not submit paperwork to prove their eligibility. Another commenter recommended gathering disaggregated demographic data related to tracking presumptive eligibility to reveal equity gaps in access and requiring Lead Agencies to report the child care supply by specific demographic variables (*e.g.,* race and ethnicity, geographic location, disability).

Response: In response to these comments, the final rule adds a requirement at § 98.71(b)(5) for Lead Agencies that choose to offer presumptive eligibility in their CCDF program to report in the ACF–800 (annual aggregate report) the number of presumptively eligible children ultimately determined eligible, the number for whom the family does not complete documentation, and the number who are determined ineligible. This was initially proposed as an addition to the CCDF Plan Preprint at § 98.16(h)(5), but we have determined the ACF–800 is a more appropriate reporting mechanism for this information. Although we considered requiring additional disaggregated demographic and supply data to evaluate equity in presumptive eligibility, we are not making other changes so as to minimize administrative burden and encourage Lead Agency uptake. Nonetheless, we encourage Lead Agencies to collect these types of data to better assess whether their presumptive eligibility policies and procedures support equitable access to child care across the populations of eligible children they serve.

Comment: Multiple commenters expressed concerns about disruptions in care if a presumptively-eligible family is found ineligible, and the potential harm to children, families, and providers. One commenter questioned if Lead Agencies could use full eligibility determination processes with multiple sets of criteria when determining eligibility for children receiving child care services under presumptive eligibility. Another commenter asked how presumptive eligibility would interact with paying providers in advance of delivery of care if a final ineligibility determination were made after a payment was issued but before the period of service closes.

Response: Presumptive eligibility is intended to support feasibly eligible children to receive child care benefits more quickly than waiting for a complete review of full eligibility, but Lead Agencies are expected to execute full eligibility determination and use the same opportunities for verification for families who do not enter the program with presumptive eligibility. We understand concerns about the potential negative impact on families and providers if a child is ultimately found to be ineligible after receiving benefits under a presumptive eligibility period or if the presumptive eligibility period ends prior to a final determination, but the benefits of presumptive eligibility benefits to families are considerable.

If a child is found to be ineligible due to eligibility requirements established by the Lead Agency, but still qualifies under federal requirements (*i.e.,* if the Lead Agency sets income eligibility below 85 percent of SMI, but the family income is still lower than the federal threshold), the Lead Agency could implement a policy allowing CCDF funds to be used to provide child care benefits for the remainder of the presumptive eligibility period for up to three months. The prohibition on using CCDF funds to provide child care assistance to children who are not eligible under federal limits does not preclude the Lead Agency from using other funds, such as State general revenue funds or federal funds like Social Services Block Grant funds, to provide a grace period of care for families to make other arrangements before their child care benefits end. We

note that State funds used to provide subsidies for children who do not meet federal eligibility requirements cannot be used to meet the required maintenance of effort or State portion of the CCDF match.

Regarding interactions between presumptive eligibility and provider payment policies, the requirement for provider payment policies to reflect generally-accepted payment policies at § 98.45(m) applies to payments for children receiving care during a period of presumptive eligibility. This includes being paid prospectively and based on enrollment not attendance. If a child is ultimately determined to be federally ineligible for CCDF, the Lead Agency cannot require the child care provider to return funds if the child was properly enrolled, except for in cases of fraud.

Comment: One commenter expressed concerns that a corrective action finding for improper payments would preclude a Lead Agency from adopting presumptive eligibility unless the cause of the errors is related to the Lead Agency's ability to perform presumptive eligibility for purposes of CCDF.

Response: Our intent was to use error rate findings as a proxy for sufficient internal controls to adequately execute the increased complexity of incorporating presumptive eligibility, not abruptly deny a Lead Agency's ability to offer presumptive eligibility because of unrelated error rate findings. As a result of this comment, we revised this language in the final rule to allow for a more considered approach to determining if a Lead Agency has effective internal controls to justify a more complex eligibility policy that includes presumptive eligibility. While we retain the authority to deny a Lead Agency with a corrective action finding for improper payments the option to implement presumptive eligibility if warranted by an analysis of the Lead Agency's internal controls, the revised language allows flexibility for ACF to evaluate the contextual factors around the error rate reporting as well as other sources of data to approve the use of presumptive eligibility policies and develop a robust corrective action plan in partnership with the Lead Agency that will ensure funds are safeguarded for CCDF eligible children.

Comment: Several commenters endorsed the proposal that payments to providers would not be deemed improper payments if a child is ultimately determined to be ineligible after the full determination process. During our consultation with Tribal Leaders and Tribal communities, one Tribal Leader expressed concern about whether Tribal Lead Agencies would be responsible for funds determined to be spent in cases of fraud and intentional program violations.

Response: We agree with the commenters and retained this language in the final rule to be explicit that if a child meets the Lead Agency defined policies for presumptive eligibility enrollment and verification, then the child is considered eligible for CCDF during the period of presumptive eligibility. A final determination of ineligibility for CCDF would not retroactively alter this initial period of eligibility or require the Lead Agency to return CCDF funds to ACF, nor would a family or provider who acted in good faith be responsible for these payments. CCDF funds are allowed to be used to pay for provider payments as long as the child meets the requirements for presumptive eligibility, has not been determined ineligible to receive CCDF benefits from the Lead Agency, and has not been receiving CCDF benefits under presumptive eligibility for more than three months. The final rule adds a clarification that these flexibilities apply so long as the payment for services for a presumptively eligible child was not for a period longer than the period of presumptive eligibility.

In cases of fraud or intentional program violation, the requirements for presumptive eligibility remain the same as for full eligibility. Regulations at § 98.60(i) require Lead Agencies to recover child care payments that are the result of fraud. The payments shall be recovered from the party responsible for committing the fraud. For other overpayments that do not result from fraud, the Lead Agency has flexibility under federal rules regarding whether to recoup the funds.

Comment: We received a few comments related to best practices for communicating with and supporting families navigating the presumptive eligibility process to avoid unwarranted findings of being ineligible.

Response: The commenters' suggestions align with the consumer education goals of CCDF as well as with the newly amended redesignated provision at § 98.21(f), aimed to reduce family burden around application processes. Lead Agency requirements for consumer education at § 98.33 and application processes are applicable to presumptive eligibility child care services. Therefore, we did not make any additional changes based on these comments.

Comment: A commenter requested clarification about whether the intent is to allow presumptive eligibility when adding a child to an existing family receiving subsidy or only during the initial application period for the household.

Response: Our primary intent is for Lead Agencies to implement presumptive eligibility for a family's initial application for child care subsidies to hasten their access to child care benefits. As discussed above, we encourage Lead Agencies to implement additional child policies that require the minimum amount of information to verify an additional child's eligibility. However, incorporating presumptive eligibility policies while waiting to verify that minimum information (*i.e.,* proof of relationship, provider payment information) is consistent with our goals of reducing bureaucratic hurdles for families.

Reducing Family Burden in Application Processes: To make it easier for eligible families to access child care services, and in alignment with provisions of the Act requiring States and Territories to develop procedures and policies that ''ensure that working parents . . . are not required to unduly disrupt their employment in order to comply with the State's or designated local entity's requirements for redetermination of eligibility for [CCDF] assistance,'' (42 U.S.C. 9858c(c)(2)(N)) the final rule at § 98.21(f) as redesignated, requires Lead Agencies to implement eligibility policies and procedures that minimize disruptions to parent employment, education, or training opportunities, to the extent practicable. Policies that lessen the burden of CCDF administrative requirements on families applying for child care assistance increase access to child care and can improve families' economic well-being. Parents report that some of the biggest challenges are long waits at inconvenient times to apply in-person and gathering and submitting the necessary documents.[65] Not surprisingly, parents also report online application options can be more convenient, less stressful, and prove especially useful in reducing the burden of document submission.

Thus, the final rule provides that Lead Agencies seek strategies to reduce these administrative burdens on families, including, to the extent practicable, by offering an online subsidy application option. Currently, only 33 States offer online subsidy applications. OCC released a CCDF model application in 2022, which includes practices for

[65] Lee, R., Gallo, K., Delaney, S., Hoffman, A., Panagari, Y., et al. (2022). Applying for child care benefits in the United States: 27 families' experiences. US Digital Response. *https://www.usdigitalresponse.org/projects/applying-for- child-care-benefits-in-the-united-states-27-families-experiences.*

defining, collecting, and verifying eligibility information, using best practices that limit burden on families.[66] Lead Agencies without online subsidy applications will be expected to demonstrate in their CCDF Plans why implementation of an online subsidy application is impracticable. Nevertheless, OCC urges Lead Agencies that do not yet offer online applications to consider doing so given the substantial benefit to families and the Lead Agencies' ability to benefit from the model application developed by OCC.

Additionally, as Lead Agencies consider ways to lessen the burden on families seeking assistance from CCDF, they are encouraged to develop screening tools to help families determine whether they are eligible for CCDF assistance, or other publicly available benefits (*e.g.,* Temporary Assistance for Needy Families (TANF) or Supplemental Nutrition Assistance Program (SNAP)) and then link directly to applications for these programs.[67]

Comment: Most commenters supported the proposal related to simplified enrollment and easing burden of application processes and offered additional proposals to support the goal. Several commenters who supported the proposal also urged ACF to require all Lead Agencies offer, at a minimum, both paper and online applications. In addition, commenters offered suggestions about how to increase accessibility and availability of applications for families seeking child care subsidies. Some commenters recommended that online applications be accessible via mobile devices given families' reliance on mobile phones to access online content. Some commenters also recommended that applications be available in multiple languages and through verbal and case note documentation for non-English speaking applicants, accessible for individuals with disabilities, in plain language or at an appropriate literacy level, and subject to usability testing where feasible. We received several comments calling for in-person or individualized support to help parents through the application process and one commenter mentioned the importance of customer service training. Several commenters offered suggestions to cross-link the application with other resources so that prospective families can have access to information on additional resources as well. These suggestions included linking the application to the consumer education and provider search websites and making information about services for families experiencing homelessness more prominent in the materials. Commenters also suggested making more flexible documentation requirements for income verification for people with informal employment or gig workers and for grandfamilies and the use of documents like tax returns and pay stubs to verify eligibility.

Response: We recognize burdensome application processes discourage families from applying for child care assistance, delay access to child care, and can cause substantial stress to parents. While we decline to require Lead Agencies use mobile-friendly or linked applications, we strongly encourage Lead Agencies to carefully consider implementing processes that make it easier for families to access and navigate enrolling in CCDF, including mobile-friendly applications. As previously noted, States and Territories that do not use online applications will be required to describe why it is impracticable in their CCDF Plans.

We also remind Lead Agencies that CCDF expenditures for the establishment and maintenance of child care information systems, including the development of an online application, are an allowable CCDF expenditure and are not considered child care administrative activities and thus do not apply to the administrative activities cap for CCDF funds. Likewise, activities that provide one-on-one support for families in submitting applications and providing access to transparent and easy to understand consumer education resources are considered quality expenditures. We also recommend Lead Agencies consider flexibilities for families that may have difficulties obtaining standard documentation. Lead Agencies have considerable flexibility in establishing the eligibility and verification requirements for families. We recommend Lead Agencies consider a wide range of circumstances in which families may be able to verify their eligibility.

Comment: Several commenters requested that we reiterate existing flexibilities meant to ease administrative burdens and support continuity of care that were not addressed in the NPRM. Some commenters specifically called for the final rule to clarify that hours of care do not have to match the hours of the eligible activity.

Response: We appreciate the recommendations to remind Lead Agencies of their considerable flexibilities in implementing their CCDF programs but did not make additional changes to the rule. Section 98.21(g) of the rule remains unchanged from current regulations and explicitly states that Lead Agencies are not required to limit authorized child care services strictly based on the work, training, or educational schedule of the parent(s) or the number of hours the parent(s) spend in qualifying activities. We therefore reiterate that Lead Agencies do not have to match the hours of care for a child participating in CCDF with the parent's work, training, or education schedule, which may limit participating children's access to high-quality settings and does not support the fixed costs of providing care so it can contribute to provider instability and reluctance to serve families with subsidies.

Eligibility Verification through Other Programs: This final rule describes at § 98.21(g), as redesignated, some Lead Agency options to simplify eligibility verification. Families receiving child care assistance are likely to be receiving or eligible to receive services from other benefits programs and coordination with other benefit programs can simplify eligibility determinations, ensure families can access all available benefits, and better support family well-being. Using enrollment in other benefit programs to verify CCDF eligibility reduces duplication of effort on the part of families and streamlines the eligibility determination process for Lead Agencies, thereby reducing burden on both sides. Such policies can also reduce the amount of time families have to wait to access child care services while Lead Agencies process eligibility determinations that are redundant to determinations made by other benefit programs. This policy is also a logical next step if Lead Agencies act on the encouragement in this final rule to develop screening tools to help families determine whether they are eligible for CCDF assistance, or other publicly available benefits (*e.g.,* TANF or Supplemental Nutrition Assistance Program (SNAP)). Twenty-three States and Territories currently use documentation from and enrollment in other benefit programs to determine CCDF eligibility for at least one eligibility component, based on data from the FFY 2022–2024 CCDF State and Territory Plan.

This final rule clarifies in § 98.21(g)(1) and (2), as redesignated, that Lead Agencies have flexibility to use enrollment in other benefit programs to satisfy specific components of CCDF

[66] *https://childcareta.acf.hhs.gov/full-model-application.*

[67] Meade, E., Gillibrand, S., & Weeden, J. (2023). Lost in the Labyrinth: Helping Parents Navigate Early Care and Education Programs, Washington, DC: New America Foundation. *https://www.newamerica.org/new-practice-lab/briefs/lost-in-the-labyrinth-helping-parents-navigate-early-care-and-education-programs/.*

eligibility without additional documentation (*e.g.,* income eligibility, work, participation in education or training activities, or residency) or to satisfy CCDF eligibility requirements in full if eligibility criteria for other benefit programs is completely aligned with CCDF requirements. In § 98.21(g)(2), Lead Agencies are expressly permitted to examine eligibility criteria of benefit programs in their jurisdictions to predetermine which benefit programs have eligibility criteria aligned with CCDF. Once programs are identified as being aligned with CCDF income and other eligibility requirements, Lead Agencies have the option to use the family's enrollment in such public benefit program to verify the family's CCDF eligibility according to § 98.68(c) or to limit the documentation required to fulfill CCDF eligibility if the programs are not in complete alignment. For example, income eligibility for TANF cash assistance (42 U.S.C. 601 *et seq.*) meets the federal CCDF income eligibility requirements and enrollment in either program could demonstrate income eligibility for CCDF without any additional documentation from a family. Due to State, Territory, and Tribal variation in eligibility thresholds by individual benefit programs, the first step to streamlining eligibility is for Lead Agencies to use their own jurisdiction-specific information on income eligibility to determine if a child is eligible for subsidy based on enrollment in that other program.

Comment: Commenters were generally supportive of encouraging Lead Agencies to verify eligibility through families' enrollment in other benefits programs, noting several Lead Agencies were already implementing or preparing to use this flexibility to varying degrees. Some commenters appreciated the flexibility for Lead Agencies to self-identify which verification requirements aligned between CCDF and other benefits programs. Many commenters supported the flexibility that if the eligibility criteria for other benefit programs within the Lead Agency's jurisdiction are completely aligned with CCDF requirements, this can satisfy CCDF eligibility requirements in full for those families or establish CCDF eligibility policies using the criteria of other public benefits programs.

Response: We are encouraged by support for reducing bureaucratic barriers for families and Lead Agencies and the benefits that streamlining program will have for families. In response, we retained the proposed language.

Comment: One commenter cautioned against adding requirements to CCDF eligibility verification that increase the bureaucratic burden for families and providers.

Response: We agree with the commenter, which is why this rule seeks to reduce bureaucratic and paperwork burdens for families and Lead Agencies in determining a child's eligibility to receive child care subsidies. CCDF regulations at § 98.20(b)(4) allow the Lead Agency to establish additional eligibility conditions or priority rules so long as they do not ''impact eligibility other than at the time of eligibility determination or re-determination.'' We recommend Lead Agencies reconsider families' engagement with other benefits programs, such as child support, as preconditions for CCDF eligibility as this likely increases the bureaucratic burden for families and Lead Agencies. Moreover, when Lead Agencies use data from other benefits programs to verify CCDF eligibility requirements, Lead Agencies must ensure that the information is only acted upon at eligibility determination or re-determination and cannot be used to discontinue child care subsidies during the eligibility period. For example, a Lead Agency that requires child support cooperation as an additional CCDF eligibility requirement, can only assess cooperation at the time of CCDF eligibility determination or re-determination and cannot use failure to cooperate as a reason to discontinue child care subsidies between eligibility determination or re-determination.

Technical Change: This final rule corrects a grammatical error by adding the word ''on'' at § 98.21(a)(2)(iii). The revised language now reads, ''If a Lead Agency chooses to initially qualify a family for CCDF assistance based *on* a parent's status of seeking employment or engaging in job search'' (emphasis added). We did not receive comments on this correction.

Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities

Subpart D of the regulations describes parental rights and responsibilities and provisions related to parental choice, including parental access to their children, requirements that Lead Agencies maintain a record of parental complaints, and consumer education activities carried out by Lead Agencies to increase parental awareness about the range of available child care options. This final rule amends this subpart to require Lead Agencies use some grants or contracts for direct services, post information about sliding fee scales on consumer education websites, and it clarifies requirements on posting full monitoring reports and aggregate data.

§ 98.30 Parental Choice

Section 98.30(b) clarifies section 658E(c)(2)(A) of the Act (42 U.S.C. 9858c(c)(2)(A)), which identifies the use of grants or contracts as a key element of parental choice of child care providers. This statutory provision states that a parent shall have the option ''to enroll such child with a child care provider that has a grant or contract for the provision of such services,'' or to receive a child care certificate. As well, section 658E(c)(2)(M) (42 U.S.C. 9858c(c)(2)(M)) requires Lead Agencies to ''develop and implement strategies (which may include . . . the provision of direct contracts or grants to community-based organizations . . .) to increase the supply and improve the quality of child care services'' for certain underserved populations. Only 10 States and Territories report using any grants and contracts for direct services, and only six States and Territories report supporting more than 5 percent of children receiving subsidy via a grant or contract even though they are required by the Act and can be one of the most effective tools to build supply in underserved geographic areas and for underserved populations.[68] Therefore, the final rule at § 98.30(b) clarifies the statutory requirement by stating that States and Territories are required to provide some direct child care services through grants or contracts, including at a minimum, using some grants or contracts for children in underserved geographic areas, infants and toddlers, and children with disabilities. The final rule requires some use of grants or contracts for each of these populations because of the particularly stark supply issues that lead to minimal parent choice. ACF encourages Lead Agencies to also consider other populations that may benefit from grants or contracts, including care for children during nontraditional hours.

Comment: Commenters strongly supported the proposal to require Lead Agencies use some grants and contracts for direct services, noting they support a more stable and equitable child care system, and many requested additional clarifications and suggested revisions. A bicameral Congressional comment also supported this provision and specifically noted ACF's authority to require some use of grants or contracts.

[68] *https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-2.*

Response: We appreciate the validation of the importance of this policy and have retained the requirement for Lead Agencies to use some grants or contracts for direct services and have made some changes based on commenter suggestions described below. Grants and contracts for direct services can play a critical role in increasing parent options for child care, particularly in underserved geographic areas and for underserved populations like infants and toddlers and children with disabilities. They increase stability for child care providers and encourage them to participate in the subsidy program. Since insufficient child care supply greatly limits parents' choices in child care arrangements, requiring some use of grants or contracts to help more parents find the child care they need.

Comment: The NPRM proposed to require the use of grants and contracts at least to provide some child care services for infants and toddlers, children with disabilities, and children who need care during nontraditional hours. Some commenters recommended requiring Lead Agencies to use grants or contracts for additional underserved or under-resourced communities and populations, and several commenters recommended removing the requirement to use grants or contracts for nontraditional hour care because families may use license-exempt home-based care for nontraditional hours either because they prefer it or because few child care centers and family child care providers operate outside of traditional business hours. Commenters indicated grants or contracts are less appropriate for license-exempt home-based child care.

Response: Based on these comments, the final rule adds ''children in underserved geographic areas'' to the list of groups required to be served with grants or contracts and removes the requirement to use grants or contracts for nontraditional hour care. Some parents prefer informal care by family or friends, often in the child's home, during nontraditional hours of care.[69] While it is important to address the stark supply issues for this type of care, commenter feedback and additional review of existing State policies leads us to believe mechanisms other than grants or contracts, such as higher payment rates, engaging with home-based child care networks, and partnering with employers that have employees working nontraditional hours, may also be effective for increasing the availability of care during nontraditional hours. As delineated in § 98.16(y), Lead Agencies must take action to build availability of nontraditional hour care for families participating in CCDF. Though the rule does not require it, we encourage Lead Agencies to consider whether contracted slots for extended hour care in the morning and evening would be a useful strategy for improving parent choice in care that meets their needs.

Comment: Some commenters requested clarification as to whether each group listed needed to be served with grants or contracts or if serving only one of the listed groups would satisfy the requirement.

Response: The final rule leaves in place the language to require each of three identified groups (*i.e.,* children in underserved geographic areas, infants and toddlers, and children with disabilities) be served with grants or contracts. The significant supply shortages in each of these types of care limit parents' child care options and would benefit from grants or contracts.

Comments: Some commenters wanted clarification as to what is meant by ''some'' grants or contracts and if ACF has a specific threshold in mind, stressing the importance of using data to determine the number of grants or contracts for direct services. Some of these commenters thought we should set a minimum threshold and others recommended against setting a minimum or maximum threshold or a formula for calculating the appropriate percentage of grant or contracts slots.

Response: ACF declines to set thresholds for ''some'' grants or contracts in this rule and encourages Lead Agencies to implement the provision sufficiently to improve supply for these types of care. However, in response to comments requesting clarification about the number of grants or contracts, we revised the language in paragraphs § 98.16 (x) and (y) to improve transparency around Lead Agency policies and require Lead Agencies to provide data on the extent to which they are serving subsidy-eligible children across the identified groups. Additionally, ACF revised the language in paragraph (y) to clarify that Lead Agencies should describe in their CCDF Plan what proportion of shortages identified in § 98.16(x) would be filled with grant or contracted slots.

Comment: Commenters recommended ACF include additional populations of children and families to be served by grants or contracts while others noted new requirement should not shift attention from one underserved group to another.

Response: ACF strongly encourages Lead Agencies to use grants or contracts for additional groups recommended by commenters, but declines to require Lead Agencies use this strategy to serve additional populations. Additional groups recommended by commenters include children experiencing homelessness, children involved with the child welfare system (including those in foster care and kinship care), adolescent parents, out-of-school time care/school age, dual language learners, 2-generation programs, children whose parents have been incarcerated, providers in rural or remote communities, and areas with an insufficient supply of licensed child care. ACF further encourages Lead Agencies use data collected through supply analysis to direct grants or contracts towards identified areas of need.

Comment: Commenters recommended that ACF specify Lead Agencies use grants or contracts across different child care settings, including family child care and networks of home-based care providers.

Response: ACF strongly encourages Lead Agencies to define and use an equity-focused distribution process for grants or contracts that includes family child care and small child care centers to support parents having a range of child care options. Many Lead Agencies successfully used such a process to target and distribute ARP Act Stabilization Grant funds. While grants or contracts are traditionally seen as a strategy for center-based care, some Lead Agencies have effective grants or contracts with family child care providers and home-based provider networks.[70]Additionally, research shows that families utilize family child care settings for infants and toddlers at higher rates than older children.[71]

[69] Adams, G. et al., ''Executive Summary: What Child Care Arrangements Do Parents Want during Nontraditional Hours?'': *https://www.urban.org/projects/informing-policy-decisions-about-nontraditional-hour-child-care.*

[70] Bipartisan Policy Center. (January 2021). Payment Practices to Stabilize Child Care. *https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2021/01/BPC-ECH_Payment-practices_RV5.pdf.;* Bromer, J., Ragonese-Barnes, M. & Porter, T. (2020). Inside family child care networks: Supporting quality and sustainability. Chicago, IL: Herr Research Center, Erikson Institute. *https://www.erikson.edu/wp-content/uploads/2020/12/Inside-FCC-networks-Case-Studies-2020.pdf.*

[71] Datta, A.R., Milesi, C., Srivastava, S., & Zapata-Gietl, C. (2021). NSECE Chartbook- Home-based Early Care and Education Providers in 2012 and 2019: Counts and Characteristics. OPRE Report No. 2021–85, Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. *https://www.acf.hhs.gov/opre/report/home-based-early-care-and-education-providers-2012-and-2019-counts-and-characteristics.*

Comment: Some commenters wanted clarification about the intended definition of ''grants and contracts,'' if the requirement was specific to direct services, and if best practices for contracting and equity could be included in a definition.

Response: We provide clarification on the definition of grants or contracts and direct services at § 98.50. We agree with commenters that grants or contracts for direct service slots should at a minimum adhere to the same requirements as certificates, including paying providers prospectively. While the final rule does not include additional regulatory language to this effect, new and existing regulations at § 98.45(m) apply to both grant or contracted slots and certificates, and therefore reaffirms these expectations. In addition, we strongly encourage Lead Agencies to design their grants or contracts with best practices in mind. Specifically, we strongly encourage Lead Agencies to pay a rate based on cost of care, offer higher rates for grant or contracted slots, and provide opportunities for additional technical assistance, coaching, mentoring, and other supports to child care programs.

Comment: A few commenters, including one member of Congress, opposed this requirement and expressed concerns that any requirement for grants or contracted slots reduced parent choice, specifically because faith-based providers may not be able to receive grants or contracts.

Response: ACF disagrees with the contention that requiring grants or contracts for populations that the statute itself requires Lead Agencies to prioritize would reduce parent choice. Section 658E(c)(2)(M) of the Act clearly states that direct contracts or grants are a strategy to increase the supply and quality of child care for underserved populations, including infants and toddlers, children with disabilities, and children who need child care during nontraditional hours. Some parents do not have meaningful choice currently,[72] and integrating some grants and contracts into direct service options will expand parents' choices. Nothing in federal law prohibits faith-based child care providers from receiving grants or contracts to provide direct child care services. Faith-based providers receiving grants or contracts are restricted from using the funds for sectarian purposes or activities, including sectarian worship or instruction (42 U.S.C. 9858k(a). Further, because families must still be offered the option of a certificate or voucher, this rule will not limit a family's ability to choose a faith-based provider and we do not expect the requirement to materially reduce the amount of funding available to faith-based child care providers through certificates or vouchers.

Comment: Some commenters suggested ACF allow Lead Agencies to opt-out of the requirement for grants or contracts if they could demonstrate there was no need or desire for grants or contracts.

Response: For the reasons listed above, including limitations in parents' choice in child care arrangements for some parents participating in CCDF, significant supply shortages, and research demonstrating the benefits of grants or contracts on supply and for providers, we decline to accept this recommendation.

§ 98.33 Consumer and Provider Education

Clarifying full monitoring reports and aggregate data. This final rule adds § 98.33(a)(4)(ii) to clarify what information Lead Agencies must post on consumer education websites. Section 658E(c)(2)(D) of the Act (42 U.S.C. 9858c(c)(2)(D)) requires monitoring and inspection reports of child care providers be made available electronically to the public. Previous regulations at § 98.33(a)(4) require Lead Agencies to post ''full monitoring and inspection reports, either in plain language or with a plain language summary,'' but the regulation did not define a ''full monitoring and inspection report.'' This lack of clarity has led to varied implementation, with many Lead Agencies only posting violations. While it is critical for parents to be aware of how a provider did not meet a health and safety requirement, it is also useful for parents to understand the full scope of a monitoring inspection, so they have the information needed to make informed child care decisions. Section 98.33(a)(4)(ii) through (iv) are redesignated accordingly without changes.

The final rule also amends paragraph (a)(5) to require the CCDF consumer education websites include the total number of children in care each year disaggregated by the type of child care provider because it provides necessary context for parents and the public to understand the aggregate data on serious injuries and fatalities in child care settings. § 98.33(a)(5) requires Lead Agencies to post the annual aggregate number of deaths and serious injuries by provider type and licensing status and instances of substantiated child abuse that occurred in child care settings each year, for eligible child care providers, on the State or Territories child care website. Lead Agencies are required to post the total number of children in care by provider category and licensing status. However, the requirement to include the total number of children in care by provider category and licensing status was only included in the preamble to the 2016 CCDF final rule and not the regulatory language itself (81 FR 67477). This omission has led to confusion and unclear expectations for Lead Agency compliance. We also separate the existing requirements in paragraph (a)(5) without change into multiple subprovisions to improve clarity.

Comment: Commenters supported the proposed clarification to the definition of ''full monitoring and inspection report'' at § 98.33(a)(4)(ii).

Response: We received no other comments on § 98.33(a)(4)(ii) and have retained the language as proposed in the NPRM.

Comment: Commenters supported the requirement for States to post the total number of children in care to their consumer education websites. Several commenters proposed that States be required to post the number of children in care by child age, licensing status, and quality rating, noting these data are needed to understand the supply of care available to families.

Response: Though we agree this disaggregated data would provide useful information about child care supply and could help parent decision-making, we understand some States may not have the capacity to publish this information. Therefore, we retained the language as proposed to ensure this new requirement does not add additional burden to States.

Comment: A few Lead Agencies commented that posting the total number of children in care would be burdensome for States. These commenters had concerns about how often Lead Agencies would be expected to collect this data and from which types of providers they would need to collect these counts. Additionally, commenters noted that collecting this data could necessitate changes to State computer tracking systems.

Response: States are already required to post this data under CCDF and ACF has created multiple technical resources to help States publish these counts on

[72] RAPID, (2022) ''Overdue: A new child care system that supports children, families and providers,'' *https://static1.squarespace.com/static/5e7cf2f62c45da32f3c6065e/t/63a1d9582916181ff4b729be/1671551320275/overdue_new_child_care_system_factsheet_dec2022.pdf.*

their websites.[73] Lead Agencies already must post the total number of children in care by provider category and licensing status on their consumer education websites and the language changes at § 98.33(a)(5) only clarify that these data, along with the counts of deaths or serious injuries, are posted annually for all eligible providers. For licensed care, States and Territories can provide an estimated number of children in care based on the capacity of licensed program, rather than actual enrollment or attendance numbers. ACF will continue to offer flexibilities if States do not have a way to estimate the number of children in license-exempt care. The language was retained as proposed.

Posting sliding fees scales. To help ensure families are aware of co-payment policies, the final rule retains a new requirement at § 98.33(a)(8) that States and Territories post information about their co-payment sliding fee scales. Section 658E(c)(2)(E) of the Act (42 U.S.C. 9858c(c)(2)(E)) requires Lead Agencies to collect and disseminate consumer education information that will promote informed child care choices for parents of eligible children, the public, and providers. Consumer education is a crucial part of parental choice because it helps parents better understand their child care options and incentivizes providers to improve the quality of their services. Since Congress expanded the Act's focus on consumer education in 2014, all States and Territories have launched consumer education websites providing parents and the general public with critical information about child care in their community and improving transparency around the use of federal child care funds. However, many of these websites still overlook key areas that impact family decisions about child care and applying for child care subsidies. For example, it remains difficult for parents in many communities to learn about co-payment rates in the subsidy program and what their family might expect to pay. Therefore, the final rule requires Lead Agencies to post current information about their system of cost-sharing (co-payments) based on family size and income. Under this new requirement, Lead Agencies are required to post about their sliding fee scale for parent co-payments, including policies related to waiving co-payments and estimated co-payment amounts for families at § 98.33(a)(8).

Comment: Commenters recognized and supported the need for the proposed consumer education requirement at § 98.33(a)(8). In general, they expressed that requiring Lead Agencies to post clear information about their co-payment policies improves access to information that is useful for families making decisions about child care.

In response to our request for comments on the type of information related to co-payments that should be included on consumer education websites, the majority of commenters on this proposal stated that consumer education websites should explain how co-payments are calculated and how co-payments might differ based on the type of provider a family chooses. Other commenters proposed that websites should include information about weekly or monthly amounts that families might pay, as well as details about co-payments when enrolling multiple children, changing a co-payment amount, and populations for which co-payments are waived entirely.

Response: This new provision at § 98.33(a)(8) clarifies that consumer education websites must help families determine the co-payment amount that they can expect to pay. We agree that it may be valuable for parents to see this information broken into weekly and/or monthly amounts, and States have the flexibility to use this approach. It may also be helpful for consumer education websites to include details about how co-payment amounts are impacted when multiple children are enrolled and outline the State-specific process for requesting a change to a co-payment amount. We appreciate these recommendations and reiterate that Lead Agencies have flexibility to inform parents about what they should expect to pay in the way that best makes sense within the context of their policies and processes. The final rule clarified with the added requirement at § 98.33(a)(8) that State websites must provide information about waiving co-payments, and we agree with commenters that posted information about populations for which co-payments are waived (*e.g.,* incomes are at or below 150 percent of the poverty level, children with disabilities) is necessary to meet this requirement.

Comment: We requested comments specifically on the type of information related to eligibility that should be included on the consumer education websites. One commenter recommended that additional eligibility information should be included on websites, specifically information about the hours required for full-time care and about the education and/or work requirements for parents participating in CCDF.

We also received recommendations for consumer education websites that were unrelated to co-payment or eligibility policies. Several commenters suggested that websites should provide information about child care waitlists, license-exempt care, Head Start eligibility, program contact information, and the language proficiency of child care staff.

Response: We appreciate the consumer education proposals related to eligibility and agree that posting about the hours required for full-time care and about the education and/or work requirements for CCDF are examples of best practices. To ensure that Lead Agencies continue to have flexibility, we opted not to make any regulatory changes to the consumer education section related to eligibility.

Comment: Some commenters recommended co-payment information posted as part of the new requirement at § 98.33(a)(8) be available to families in multiple languages. Several commenters recommended we require Lead Agencies post sliding fee scale information in multiple languages or for websites to have a translation option. Some commenters also suggested that consumer education websites should include co-payment calculators.

Response: The regulation already requires at § 98.33(a) that consumer education websites are ''easily accessible websites that ensures the widest possible access to services for families who speak languages other than English and persons with disabilities.'' Therefore, the information posted on the website, including the information about sliding fee scales, must be easily accessible and ensure the widest possible access to services for families who speak languages other than English. We agree that online co-payment calculators can be a helpful tool for families to access child care information, and we encourage Lead Agencies to follow the example of the States that have already implemented these tools on their websites. However, we declined to add a regulatory requirement for States to add co-payment calculators, as to maintain flexibility for States.

[73] Child Care State Capacity Building Center. (September 29, 2023). Consumer Education website Requirements Infographic. U.S. Department of Health and Human Services, Administration for Children and Families. Office of Child Care. *https://childcareta.acf.hhs.gov/sites/default/files/new-occ/resource/files/consumer_education_website_requirements.pdf.;* Child Care State Capacity Building Center. (August 2021). Template for Displaying Serious Injuries, Deaths, and Instances of Substantiated Child Abuse in Child Care. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care. *https://childcareta.acf.hhs.gov/sites/default/files/new-occ/resource/files/aggregate_data_template_for_posting_serious_injuries.pdf.*

Comment: Commenters also suggested other information dissemination strategies in addition to the new website requirement at § 98.33(a)(8). Several commenters suggested we require States provide families a copy of the sliding fee scale that includes a plain-language explanation of how co-payments are calculated in their home language. Some commenters wanted Lead Agencies to require providers post the sliding fee scale prominently in child care facilities. They also supported the effort to expand information dissemination strategies but wanted to go further and encourage States to adopt additional forms of communication (*e.g.,* pamphlets at community-based spaces) and to utilize search engine optimization. Commenters focused on increasing access to people with low literacy and encouraged the adoption of mobile-friendly information as much as possible.

Response: We appreciated commenters providing additional suggestions for information dissemination strategies. While we opted not to add additional requirements to provide copies of the sliding fee scale to families, to post sliding fee scale information in child care facilities, to utilize search engine optimization, or to adopt additional forms of communication beyond websites, we encourage all Lead Agencies to utilize various communication methods to reach families with low-literacy or without access to computers. We encourage states to create websites that are mobile-friendly. It is essential for child care information to be accessible to all families, and we recognize that no single information dissemination strategy will work for all Lead Agencies.

Subpart E—Program Operations (Child Care Services) Lead Agency and Provider Requirements

Subpart E of the regulations describes Lead Agency and provider requirements related to applicable health and safety requirements, monitoring and inspections, and criminal background checks. It also includes provisions requiring the Lead Agency to set payment rates for providers serving children receiving subsidies that ensure equal access to the child care market and to establish a sliding fee scale that provides for affordable cost-sharing for families receiving child care assistance.

This final rule includes changes to this subpart related to family co-payments and Lead Agency payment rates and practices to providers, as well as technical changes to criminal background checks.

§ 98.43 Criminal Background Checks

Section 658H(b) of the Act (42 U.S.C. 9858f(b)) and § 98.43(b) require a child care staff member to complete a comprehensive background check to be eligible for employment by a child care provider that is licensed, regulated, or registered or eligible to participate in CCDF. The comprehensive check must include a Federal Bureau of Investigation (FBI) fingerprint check, a search of the National Crime Information Center's National Sex Offender Registry (NCIC NSOR), a fingerprint-based search of the state criminal registry, a search of the state sex offender registry, and a search of the state-based child abuse and neglect registry in the state where the child care staff member resides and each state where such staff member resided during the preceding 5 years.

Section § 98.43(d)(4) allows prospective child care staff to begin working for a child care provider after receiving results from either the FBI fingerprint check or a fingerprint check of the state criminal registry or repository in the state where the staff member resides. Staff members that are hired before all background check components required at § 98.43(b) are completed must be supervised at all times by an individual who has already received qualifying results. This process is often referred to as ''provisional employment.'' The intent in establishing the provisional employment requirement in the 2016 Final Rule was to help staff begin work quickly while ensuring child safety by prohibiting prospective staff who have not completed the FBI or the fingerprint in-state criminal background checks from working directly with children.

Since its inclusion in the 2016 CCDF Final Rule, States, Territories, Tribes, and child care providers have expressed concerns with the background check requirements, including those related to the provisional employment requirement, stating that they cause hiring delays and exacerbate staffing challenges. Many states continue to be out of compliance with one or more of the background check requirements, including provisional hiring.

While we acknowledge the operational challenges associated with the Act's background check provisions, the vast majority of the requirements are established in the Act and cannot be changed through regulations. This final rule makes a few technical changes to sections of the regulation that were previously unclear.

Responsibility for eligibility determination. This final rule makes a technical change at § 98.43(a)(1)(i) to clarify that States, Territories, and Tribes must have requirements, policies, and procedures that require the entity to make a determination of eligibility for child care staff based on the background check and cannot simply provide results to the child care provider to make the determination. This is consistent with the statutory requirement at section 658H(e)(2)(A) (42 U.S.C. 9858f(e)(2)(A)) that ''[t]he State shall provide the results of the criminal background check to the provider in a statement that indicates whether a child care staff member (including a prospective child care staff member) is eligible or ineligible for employment described in subsection (c), without revealing any disqualifying crime or other related information regarding the individual.'' Previously there has been some confusion as to whether the Lead Agency should simply give the results to child care providers to then make the determination. Relatedly, the final rule amends § 98.43(c)(1) to clarify that it is the State, Territory, Tribe, and Lead Agency's responsibility to determine a prospective staff member's eligibility for employment as a result of the background check requirements and that a child care provider does not have a role in reviewing background check results and determining a staff member's employment eligibility. This does not preclude child care providers from using additional discretion for hiring after the State, Territory, or Tribe's determination of eligibility based on the comprehensive background check.

Comment: Commenters supported these proposed clarifications. Some expressed concerns that the change at § 98.43(a)(1)(i) when combined with the proposed change related to qualifying results at § 98.43(d)(3)(i) would change policies related to provisional employment.

Response: As discussed in more detail below, we are not making any substantive changes to requirements related to provisional hiring. Rather, this change is meant to clarify that States, Territories, and Tribes must have processes related to determining a staff member's eligibility. Previous regulatory language did not include that requirement and led to confusion about who was responsible for determining eligibility. Therefore, we kept the change as proposed.

Comment: One commenter requested clarification on whether this provision would impact existing State hiring practices, especially those that allow child care providers to make a final hiring decision *after* the State has made

an employment eligibility determination based on State and federal regulations.

Response: Our intention is to clarify the role of the State, Territory, Tribe, and Lead Agency as it relates to making determinations of employment eligibility. Previous regulatory language made it unclear whether child care providers could make determinations of eligibility, and Lead Agencies had varying interpretations of this requirement. In response to comments, we revised the proposed change to also remove reference to child care providers in the introductory language at § 98.43(c)(1) to reinforce that child care providers do not have a role in the employment eligibility determination process.

State, Territory, and Tribal regulations and procedures may allow a child care provider to establish its own criteria for unsuitability even *after* the State, Territory, or Tribe determines that the individual is eligible for employment based on CCDF regulations and State Code. This means that it is possible for a child care provider to decide not to hire an individual, even when that individual has been deemed eligible for employment by the state, territory, or Tribe. However, as mentioned in the 2016 Final Rule Preamble, we continue to strongly encourage States, Territories, and Tribes and child care providers to ensure that hiring practices meet the recommendations of the U.S. Equal Employment Opportunity Commission for any additional disqualifying crimes.[74]

Disqualifying Crimes. Section 658H(c) of the Act (42 U.S.C. 9858f(c)) and § 98.43(c)(1) of the regulations specify disqualifying crimes for child care staff members of providers serving children receiving CCDF assistance. The disqualification at § 98.43(c)(1)(v) is for a conviction of a violent misdemeanor as an adult against a child, including a misdemeanor involving child pornography. There has been some confusion as to whether a misdemeanor involving child pornography needed to be classified as violent or non-violent to be a considered a background check disqualifier. To address these questions, the final rule amends § 98.43(c)(1)(v) to classify any misdemeanor involving child pornography as a disqualifier under CCDF, regardless of whether the crime is classified as violent or non-violent.

[74] U.S. Equal Employment Opportunity Commission, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, *https://www.eeoc.gov/laws/guidance/upload.*

Comment: Commenters requested additional clarification about which misdemeanors involving child pornography must be considered disqualifying offenses under CCDF.

Response: To address comments, we revised the proposed change at § 98.43(c)(1)(v) to further clarify that *any* misdemeanor conviction involving child pornography must be considered a disqualifying crime whether considered violent or not.

Comments: One commenter requested we define the term ''violent.''

Response: We decline to define the term ''violent'' in the regulation. Section 658H(c) of the Act separately defines felonies involving child pornography as being a disqualifying ''crime against children'' (42 U.S.C. 9858f(c)(1)(D)(iii) and (E)). Felonies are listed at subparagraph (D) and misdemeanors are listed at subparagraph (E). Lead Agencies should define ''violent'' in accordance with their own State, Territory, or Tribal law.

Receiving Qualifying Results. Section 658H(d) of the Act (42 U.S.C. 9858f(d)) and § 98.43(d) of the regulations require child care providers to submit requests for background checks prior to when an individual becomes a staff member and at least once every five years. § 98.43(d)(3)(i) makes an exception if a staff member already received a background check within the past five years. The final rule amends § 98.43(d)(3)(i) to clarify those results must be qualifying results. This is consistent with how OCC has supported and overseen this provision since 2016.

In response to comments, the final rule also clarifies at § 98.43(d)(4) that a prospective staff member may begin working with children only after they receive qualifying results for either the FBI fingerprint check or the in-state fingerprint check (as long as their work with children is supervised by a staff member whose background check is complete). Simply submitting the fingerprint for the FBI check or the in-state check is not sufficient for a prospective staff member to be provisionally employed to work with children. This is consistent with how OCC has enforced and provided guidance for the provisional hire requirement since 2016, but the underlying regulation wording has caused some confusion. In both these instances, *submitting* background checks is insufficient for working with children because it is necessary to first *receive* qualifying results.

Comment: Commenters were generally supportive of the clarification in § 98.43(d)(3)(i), but some raised concerns about whether this technical change would impact the existing provisional hire flexibility at § 98.43(d)(4), which commenters noted was a critical flexibility.

Response: In this final rule, the provisional hire flexibility remains unchanged from the 2016 Final Rule: States, Territories, and Tribes may permit child care providers to provisionally hire individuals for whom there are qualifying results on either the FBI fingerprint check or the in-state fingerprint check as long as their work with children is supervised by a staff member whose background check is complete. We amended § 98.43(d)(4) for clarity in response to comments and make no substantive changes to the provisional hire rule.

§ 98.45 Equal Access

Demonstrating Equal Access. Section 98.45(b) requires Lead Agencies to summarize in their CCDF Plans the data and evidence relied on to ensure that families participating in CCDF have equal access to child care services comparable to those provided to families not eligible to receive child care assistance. The final rule amends (b)(5) to require Lead Agencies describe how co-payments ''do not exceed 7 percent of income for all families.'' This change aligns with the new requirement at redesignated § 98.45(l)(3) to limit family co-payments to 7 percent of family income. Fuller discussion of this change, including comments and responses, are later in this preamble at § 98.45(l).

Market Rate Survey Reports. This final rule requires at new § 98.45(f)(1)(iv) that States and Territories include data on the extent to which CCDF child care providers charge amounts to families more than the required family co-payment in instances where the provider's price exceeds the subsidy payment, including data on the size and frequency of any such amounts. States and Territories have the discretion to determine how they present this data in their reports. As States and Territories have already been required to examine this data as part of their market rate survey or approved alternative methodology, we do not expect this requirement to create new burdens for the Lead Agencies.

This requirement was not proposed in the NPRM but is being added in this final rule in response to comments noting that the new requirement capping family co-payments made it more important to have transparent and timely data about the true out of pocket costs for families receiving subsidies. The comments received are discussed at § 98.71.

Paying the Established Subsidy Rate. This final rule codifies at § 98.45(g) existing policy that allows Lead Agencies to pay eligible child care providers caring for children receiving CCDF subsidies the Lead Agency's established subsidy payment rate to account for the actual cost of care, even if that amount is greater than the price the provider charges parents who do not receive subsidy. The preamble to the 2016 CCDF Final Rule states that Lead Agencies may pay amounts above the provider's private pay rate if they are designed to pay providers for additional costs associated with offering higher-quality care or types of care that are not produced in sufficient amounts by the market. (81 FR 67514). However, this language was not included in the regulation, which has led to misunderstanding in the field and led some Lead Agencies to prohibit paying child care providers the full established payment rate.

Section 658E(c)(4) of the Act (42 U.S.C. 9858c(c)(4) and § 98.45 require Lead Agencies to set child care provider payment rates based on findings from a market rate survey or an approved alternative methodology to ensure children eligible for subsidies have equal access to child care services comparable to children whose parents are not eligible to receive child care assistance because their family income exceeds the eligibility limit. Lead Agencies must also complete a narrow cost analysis, regardless of whether they used a market rate survey or approved alternative methodology to set rates. A market rate survey is the collection and analysis of prices and fees charged by child care providers for services in the priced market, and a narrow cost analysis estimates the true cost of care, not just price. Lead Agencies must analyze price and cost data together to determine adequate child care provider subsidy rates to meet health, safety, and staffing requirements and meeting these standards relies on child care providers receiving the full established payment rate. ACF strongly encourages Lead Agencies to set payment rates high enough so that child care providers can retain a skilled workforce and deliver higher-quality care to children receiving subsidies and the policies can achieve the equal access standard required by law. The preamble to the 2016 CCDF final rule restated the importance of setting higher payment rates and recommended the 75th percentile as a benchmark to gauge equal access for Lead Agencies, stating ''Established as a benchmark for CCDF by the preamble to the 1998 Final Rule (63 FR 39959), Lead Agencies and other stakeholders are familiar with [the 75th percentile] as a proxy for equal access.'' (81 FR 67512)

ACF has prioritized the importance of setting higher payment rates and in April 2023 determined that any payment rates set at less than the 50th percentile were insufficient to meet the equal access requirements of CCDF. ACF noted that the 50th percentile is not an equal access benchmark, nor is it a long-term solution to gauge equal access, and thus may not be considered sufficient for compliance in future cycles. But the value of setting higher payment rates is undermined if a Lead Agency does not pay the full established rate. Though allowable under CCDF, it undermines parent choice and likely limits the number of participating children in higher quality care.

Paying all CCDF providers at the Lead Agency-established rate is a key payment practice that reflects the actual cost of child care, fosters parent choice, increases child care quality, and supports better child care supply. This is existing policy under CCDF but because of its importance to achieving the main purposes of the Act, this Final Rule codifies the policy in the regulatory language to reduce confusion.

Comment: Comments on this proposal were overwhelmingly positive in support of the codification and clarification on paying the established rate, although a few commenters offered suggestions for implementation support or some reasons for caution. Commenters stated that paying the full established payment rate will increase provider stability, encourage provider participation in the subsidy program, and encourage Lead Agencies to pursue cost-based alternative methodologies and set payment rates closer to the true cost of care. Several commenters supported our assessment that paying the full established rate will help address inequities that arise when providers in low-income communities cannot raise fees because families who do not receive CCDF are not able to pay more for child care. Additionally, several comments noted that paying the established rate will also benefit middle-income families who are not eligible for CCDF because program income would increase without passing costs to parents. Moreover, commenters provided evidence from States that pay the full rate, including showing that in one State following the repeal of the law prohibiting payment above the private rate in 2019 improved access to quality child care, reduced bureaucratic requirements for the state, and removed one incentive for providers to raise rates for private pay families.

Response: We appreciate commenters' strong support for this critical policy clarification, especially related to the role it can play in addressing inequities in the child care system and its benefit to families that do not receive subsidies and have not made changes to the proposed language. While the 2016 CCDF Final Rule stated in the preamble that Lead Agencies had the ability to pay child care providers above their established private-pay tuition, it is clear from comments that this clarification in the rule is necessary to ensure Lead Agencies are aware of this option and encouraged to implement this practice.

Comment: A few commenters requested ACF articulate clearly that paying the established rate is encouraged, but not required. In addition, one commenter noted that obtaining legislative approval to pay the established rate could be challenging for Lead Agencies in States that prohibit this practice. On the other hand, a few commenters recommended ACF require Lead Agencies to pay child care providers the full rate established rate.

Response: ACF reiterates this policy is encouraged but not required and acknowledges States will have different internal processes should they decide to newly implement this policy.

Comment: Additionally, commenters emphasized paying the established rate for children receiving subsidy does not address the funding limitations faced by child care providers who serve families with different levels of income.

Response: ACF acknowledges this provision does not fully address the broader issues about the funding and stability of the child care system.

Capping Family Co-payments. Section 658E(c)(5) of the Act (42 U.S.C. 9858c(c)(5)) establishes that Lead Agencies cost-sharing and sliding fee policies cannot be a ''barrier to families receiving assistance.'' This final rule clarifies at §§ 98.45(b)(5) and 98.45(l)(3) as redesignated that co-payments cannot exceed 7 percent of a family's income because ACF considers co-payments above that rate to be an impermissible barrier to a family receiving assistance and therefore not permissible under CCDF. If a family receives CCDF for multiple children, their total co-payment amount also could not exceed 7 percent of the family's income. We anticipate these changes will lower child care costs for many families, reduce a barrier to child care access, and improve family well-being and economic stability.

The preamble (81 FR 67515) of the 2016 CCDF Final Rule established 7 percent as the federal benchmark for an

affordable co-payment for families receiving CCDF but did not make it a mandatory ceiling. According to federal fiscal year (FFY) 2022–2024 CCDF State and Territory Plans, 15 Lead Agencies have set all their co-payments to 7 percent or less. Among the rest of Lead Agencies, co-payments rise as high as 27 percent of family income. In limiting family co-payments to no more than 7 percent of household income, the child care costs for families with low incomes will better align with cost burdens for higher income families. Families with lower incomes pay a higher portion of income for child care than those with higher incomes. For example, the President's Council of Economic Advisers found that households with annual incomes below $25,000 pay between 9 and 31 percent of their income for child care, while households with annual incomes above $150,000 pay between 6 and 8 percent of their annual income for child care.[75]

In response to comments, the final rule includes a clarification at newly designated § 98.45(n)(5) to require Lead Agencies to demonstrate in their CCDF Plan that the total payment to a provider (subsidy payment amount and family co-payment) is not impacted by cost-sharing policies. Lead Agencies must continue to set payment rates at levels that provide equal access to care for families receiving child care subsidies, and ACF expects to closely monitor Lead Agency payment rates to ensure reductions in family co-payments transfer the cost to Lead Agencies and not providers.

Comment: Most commenters on this proposal supported the 7 percent limit, with many comments validating that child care co-payments can act as a barrier to child care access. Commenters, including a bicameral letter from members of Congress, reaffirmed the need to require the 7 percent cap to meet statutory equal access requirements rather than continuing to defer to Lead Agency discretion.

In general, many commenters acknowledged the negative consequences high co-payments can pose for CCDF families and providers, citing research that the cost of child care is a barrier to access at any co-payment level.[76] One commenter shared how they have witnessed how waived co-payments under COVID–19 supplemental funds benefited families, including helping them cover other bills and pay off debt. Other commenters acknowledged the importance of supporting affordable co-payments for families, and the importance of removing barriers that undermine parental choice.

Some commenters provided data on the negative economic impact that the lack of affordable child care poses for their State and the country. According to a 2023 statewide survey of 800 registered voters in Ohio, 70 percent of nonworking or part-time working mothers indicated that they would reenter the workforce or work more hours if they had access to affordable child care.[77] The same survey found 83 percent of Ohio small business owners citing child care as a barrier to hiring.[78] Similar concerns regarding child care affordability were found in Maine from a 2021 Statewide Community Needs Assessment conducted by the Maine Community Action Partnership,[79] and multiple Portland Regional Chamber of Commerce member surveys showed that lack of child care was a significant barrier to hiring, training, and retaining employees for small and large employers throughout the State.[80] Speaking to national trends, another comment highlighted data from the U.S. Chamber of Commerce showing that half of all workers and nearly 60 percent of parents cite lack of child care as their reason for leaving the workforce, and research shows that once women leave the workforce, it is challenging for them to return.[81]

Response: We have retained the prohibition on Lead Agencies setting co-payments above 7 percent of family income because such co-payments would be a barrier to child care access for families and appreciate commenters' support.

Comment: In the NPRM, we requested comment on whether 7 percent is the correct threshold for determining a barrier to child care access, including data on child care affordability. Some organizations noted that 7 percent of family income would not be affordable for many families and recommended a lower cap, while others supported the 7 percent proposal but preferred we set a lower cap. Commenters also noted that some States have already taken steps to significantly limit family co-payments, including one State that plans to implement a policy that would cap co-payments to a lower standard of 1 percent of a family's income. We also received a small number of comments questioning whether 7 percent is the correct benchmark for affordability and recommending further study of affordability, and/or funding a commission of experts or creating an advisory board with parents and providers before establishing the requirement. Others supported the requirement to limit co-payments but recommended that we continue to conduct research on an appropriate affordability threshold to update the cap in the future.

Response: We retain the 7 percent cap in this final rule because we believe amounts above this threshold pose a barrier to child care access in the CCDF program. We further note that 7 percent of family income is not affordable for many families participating in CCDF and encourage Lead Agencies to adopt lower co-payment caps and minimize or waive co-payments for more families. As discussed above, families with low incomes on average pay 31 percent of their incomes for child care, while families with higher incomes pay between 6 and 8 percent. As CCDF assistance is intended to offset the disproportionate share of income that families with low incomes pay for child care, families participating in CCDF should not be required to pay a greater share of their income than higher income families.

Finally, we agree that supporting research to better understand child care cost burden and affordability for families is important. The National Academies of Sciences, Engineering, and Medicine published a consensus report in 2018 that included discussion of affordability for families that detailed the inherent complexity in defining what is affordable for families.[82] The ACF Office of Planning, Research, and Evaluation supports ongoing research on child care affordability. However, the

[75] *https://www.whitehouse.gov/cea/written-materials/2023/07/18/improving-access-affordability-and-quality-in-the-early-care-and-education-ece-market/.*

[76] Adams, G., & Pratt, E. ''Assessing child care subsidies through an equity lens.'' (2021). Urban Institute.

[77] Slideshow summarizing study findings retrieved from *https://www.groundworkohio.org/_files/ugd/d114b9_956a4a95f16d44819696f1594fe98ce0.pptx?dn=POS_Groundwork%20Ohio%20Presentation%20Deck_Final.pptx.*

[78] Ibid.

[79] 2021 Statewide Community Needs Assessment, Maine Community Action Partnership, December 2021. Retrieved from *https://mecap.org/wp-content/uploads/2022/01/MeCAP-Statewide-Community-Needs-Assessment-Report-with-Appendices-FINAL-12032021-2.pdf.*

[80] Portland Regional Chamber of Commerce, December 2021. Retrieved from *https://legislature.maine.gov/testimony/resources/AFA20220303Dundon132906387075472062.pdf.*

[81] Ferguson, S. & Lucy, I. ''Data Deep Dive: A Decline of Women in the Workforce.'' U.S. Chamber of Commerce, April 27, 2022. Retrieved from *https://www.uschamber.com/workforce/data-deep-dive-a-decline-of-women-in-the-workforce.*

[82] National Academies of Sciences, Engineering, and Medicine. (2018). Transforming the Financing of Early Care and Education. Washington, DC: The National Academies Press. *https://doi.org/10.17226/24984.*

need to lower family child care costs is urgent for those with children in child care now. The final rule does not alter Lead Agency flexibility to set co-payment caps lower than 7 percent of family income, and we encourage Lead Agencies to ensure co-payments support affordability with lower co-payments.

Comment: We received four comments, including one from a member of Congress, opposing our proposal to lower co-payments and questioning our regulatory authority to do so.

Response: Section 658E(c)(5) of the Act requires Lead Agencies to establish and periodically revise a sliding fee scale that provides for cost-sharing for families receiving CCDF funds. The 2014 reauthorization of the Act newly clarified that CCDF cost-sharing policies should not be ''a barrier to families receiving assistance'' under CCDF, and as noted above, high co-payments above 7 percent are a barrier to families accessing child care assistance. Twenty-two members of Congress wrote in support of the proposal and indicated this regulatory change reflected statutory requirements.

Comment: A few commenters shared concerns that limiting co-payments for CCDF families would increase child care costs for the middle class.

Response: We anticipate that limiting co-payments for CCDF families will not change the amount the provider will receive for that child. Rather, it will transfer costs from parents who receive CCDF assistance to Lead Agencies so there is no reason to anticipate this will increase child care costs for families without subsidies, the middle class, or other families. Moreover, a recent study of child care subsidies in Minnesota demonstrated that child care subsidies increased the supply of child care while having a de minimis impact on child care costs.[83] When the supply of child care increases in a community, all families benefit because they have more options and can more easily access child care.

Comment: We received a few comments requesting clarity on the definition of family income used to implement the requirement.

Response: We decline to provide a definition of family income in this final rule and continue to allow Lead Agencies the flexibility to specify how to define family income, which has implications for both a family's eligibility for CCDF assistance and the family's required co-payment amount. This flexibility allows Lead Agencies to determine how they want to define family unit and income.

Comment: A few commenters requested flexibility to set co-payments above the 7 percent requirement for CCDF families with higher incomes or with multiple children in care.

Response: We decline to permit family co-payments higher than 7 percent of family income. The 7 percent of family income co-payment cap applies regardless of the number of children in a family in need of care to minimize the likelihood that cost is a barrier to child care access for that family. In addition, families participating in CCDF have low incomes, even those with incomes on the higher end of the eligibility threshold, making 7 percent of family income a substantial financial burden. If we were to allow the requested flexibility, families at the higher end of the CCDF eligibility threshold could be faced with child care costs well above the 7 percent threshold. For example, analyses show that the average household with income between $35,000 and $49,000 spends approximately 18 percent of their income on child care for their young children. This estimate excludes households that use child care but do not pay for it. When including all households (those paying for child care and those who do not pay), the average household in this income bracket still spends 8 percent of their income on child care.[84]

Comment: We received some comments expressing concern about tradeoffs to caseload while still acknowledging the value of lowering co-payments, and we received a few comments requesting the ability to delay implementation of the requirement when a Lead Agency faces tradeoffs, such as reducing access to subsidies.

Response: The Act prohibits cost-sharing policies that would be a barrier to child care access, and it is imperative that parent co-payments are not a barrier to child care access for families participating in CCDF so we are retaining the 7 percent co-payment cap.

Comment: One comment requested that we require the Lead Agency to collect co-payments instead of providers.

Response: The Act and regulation have never specified whether the Lead Agency or child care provider should be responsible for collecting co-payments from families, and we retained this approach so Lead Agencies retain the flexibility to determine their own policies on collecting co-payments. We encourage Lead Agencies to adopt policies that support child care provider operations.

Comment: Some commenters were concerned the 7 percent cap would result in reduced payment rates to child care providers and requested additional safeguards above our commitment to ongoing monitoring of Lead Agency payment rates.

Response: As explained in the NPRM, we strongly agree that the 7 percent co-payment cap should not decrease the amount paid to the child care provider, but rather shift some of the cost from families to Lead Agencies. Under CCDF, payments to providers are a combination of the Lead Agency share and the parent share. Capping the amount of the parents' share should result in a comparable increase to the Lead Agency's share and thus has no impact on the total amount providers receive. To ensure clarity on this point, the final rule includes a new change at § 98.45(n)(5) to require Lead Agencies to demonstrate in their CCDF Plan how they ensure that they are not reducing the total payment (subsidy payment amount and co-payment) given to child care providers when implementing this requirement. ACF expects to closely monitor Lead Agency payment rates to ensure reductions in family co-payments do not shift to providers. As will be discussed later, this also applies when Lead Agencies exercise their flexibility to waive co-payments for preapproved populations of families and any additional populations proposed in the CCDF Plan.

Comment: We received mixed comments on state flexibility to allow child care providers to charge parents more than the established co-payment to cover the difference between the subsidy payment and the child care provider's private pay rate, with some comments in support of allowing additional charges, while others opposed such charges.

Response: This rule does not make any changes to the existing policies at § 98.45(b)(5) that permit child care providers to charge parents additional amounts to cover the difference between the subsidy payment and the child care provider's private pay rate, as long as the Lead Agency has demonstrated that

[83] Lee, Won Fy, Aaron Sojourner, Elizabeth E. Davis, and Jonathan Borowsky. 2024. ''Effects of Child Care Vouchers on Price, Quantity, and Provider Turnover in Private Care Markets.'' Upjohn Institute Working Paper 24–394. Kalamazoo, MI: W.E. Upjohn Institute for Employment Research. *https://doi.org/10.17848/wp24–394.*

[84] Council of Economic Advisors (CEA) analysis of the 2019 National Survey of Early Care and Education (NSECE). *https://www.whitehouse.gov/cea/written-materials/2023/07/18/improving-access-affordability-and-quality-in-the-early-care-and-education-ece-market/#_ftn2.*

the policy promotes affordability and access, though we agree this flexibility may present a barrier to access for some families. We strongly encourage Lead Agencies to set child care provider payment rates to cover the cost of care to minimize providers' need for such policies.

Waiving Co-payments. In the NPRM, we proposed to amend § 98.45(l)(4), as redesignated, to make it easier for Lead Agencies to waive co-payments for two additional populations—eligible families with income up to 150 percent of the federal poverty level and eligible families with a child with a disability as defined at § 98.2. We requested public comment on whether States would benefit from having the option to waive co-payments for other populations, as well as requesting commenters share potential additional categories of families for which co-payments could be waived.

This final rule amends § 98.45(l)(4), as redesignated, to allow Lead Agencies the discretion to more easily waive co-payments for specifically eligible families with incomes up to 150 percent of the federal poverty level, children who are in foster and kinship care, those experiencing homelessness, those with a child with a disability as defined at § 98.2, and those enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq.*). Previous CCDF regulations allowed Lead Agencies to waive co-payments for families with incomes up to 100 percent of the federal poverty level and this final rule increases that threshold to 150 percent. This rule does not alter the existing option that allows Lead Agencies to waive co-payments for families in need of protective services or to determine other factors for waiving co-payments. Lead Agencies have authority to define ''other factors''—such as family income above 150 percent of the federal poverty level or any of the additional populations recommended in public comment but not included as part of this final rule (*e.g.,* families who benefit from Temporary Assistance for Needy Families (TANF), adolescent parents, and the child care and Head Start workforce).

Comment: There was strong support for allowing Lead Agencies the flexibility to waive co-payments for the proposed populations and only one comment in opposition. Supporters noted the importance of lowering child care costs for families and the one comment in opposition to the policy argued that families should be responsible for some of their child care expenses. Many comments in favor of the proposed changes also recommended we include additional populations of families for which co-payments could be waived.

Response: The final rule at § 98.45(l)(4) as redesignated, retains the proposal and includes three additional populations in response to comments: families with children in foster and kinship care, families experiencing homelessness, and families with children enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq.*). According to the FFY 2022–2024 CCDF State and Territory Plans, 28 Lead Agencies currently waive co-payments for children in foster care, and 16 Lead Agencies currently waive co-payments for families experiencing homelessness either by defining the group as part of their definition of families in need of protective services or as an ''other factor'' determined by the Lead Agency. For children enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq.*), seven Lead Agencies are currently waiving co-payments for this group. Changes in this final rule will allow Lead Agencies to waive co-payments for families with children in foster and kinship care, families experiencing homelessness, and families with children enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq.*) without needing to define criteria for waiving co-payments and requesting approval for these groups in the CCDF Plan.

As noted in the preamble of the 2016 Final Rule, waiving CCDF co-payments for families in Head Start and Early Head Start, including children served by ACF-funded Early Head Start-Child Care partnerships, is an important alignment strategy. Head Start and Early Head Start are provided at no cost to eligible families, who cannot be required to pay any fees for Head Start services. By including children enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq.*) as an additional population for waiving co-payments in this final rule, we are making it easier for Lead Agencies to support continuity of care for families.

The 2014 reauthorization of the Act included several provisions to improve access to high-quality child care for children and families experiencing homelessness. Co-payments could serve as an additional barrier for families experiencing homelessness to access high-quality child care for their children. Therefore, this final rule makes it easier for Lead Agencies to waive co-payments for this population without needing to define criteria for waiving co-payments and requesting approval in the CCDF Plan. This change is consistent with the statute's focus on improving CCDF services for children experiencing homelessness.

While we acknowledge the benefits of including additional categories of families, we decline to include an exhaustive list of family categories for waiving co-payments, but this should not be interpreted as discouraging States and Territories from taking steps to reduce co-payments for families who do not fall within one of the preapproved categories included in this final rule. We strongly encourage Lead Agencies to take full advantage of the flexibility retained in this final rule to tailor co-payment policy to reduce or eliminate financial barriers for families utilizing the CCDF program. According to FFY 2022–2024 CCDF State and Territory Plan data, Lead Agencies are utilizing existing flexibilities to waive co-payments through CCDF Plan approval for many of the populations recommended by commenters. For example, 20 Lead Agencies have CCDF Plan approval to waive co-payments for families who benefit from Temporary Assistance for Needy Families (TANF) and 9 Lead Agencies are approved to waive co-payments for adolescent parents. Notably, many commenters recommended waiving co-payments for members of the child care workforce. Some Lead Agencies waive or are considering waiving co-payments for child care workers, and we encourage Lead Agencies to consider whether proposing to waive co-payments for child care workers might be a helpful workforce strategy.

Comment: We received some comments that supported allowing Lead Agencies to waive co-payments for family income thresholds higher than the proposed 150 percent federal poverty level. Some comments recommended providing the ability to waive co-payments for all families.

Response: We support Lead Agencies minimizing co-payments for all families participating in CCDF and waiving co-payments for many families. We strongly encourage Lead Agencies to significantly reduce co-payments for families, including waiving co-payments for families with incomes higher than 150 percent of the federal poverty level. Lead Agencies are permitted to establish other criteria for waiving co-payments at a higher threshold in the CCDF Plan, at their discretion. Since section 658E(c)(5) of the Act (42 U.S.C. 9858c(c)(5)) requires that Lead Agencies establish a cost-sharing arrangement for families benefiting from assistance, we do not have the authority to allow Lead Agencies to eliminate the co-payment

requirement for all families receiving CCDF assistance.

Comment: Some comments requested we require Lead Agencies to waive co-payments for certain populations instead of maintaining it as an option for CCDF Lead Agencies.

Response: We strongly encourage Lead Agencies to take advantage of the Act's flexibility to waive co-payments for the preapproved populations included in the final rule, as well as any populations Lead Agencies choose to describe and propose in the CCDF Plan as part of their waiving policy.

Comment: One commenter requested that we require co-payments be waived for siblings as part of the option to waive co-payments for families with children with disabilities.

Response: As was proposed in the NPRM and retained in this final rule, the option to waive co-payments for eligible families with children with disabilities applies to the entire family (including siblings). Therefore, Lead Agencies have the flexibility to waive co-payments for all children within eligible families and not just for the child with a disability. While we agree with the commenter's concerns, and we encourage Lead Agencies to take advantage of this flexibility and serve eligible families in the manner outlined in this final rule.

Comment: Some comments raised concerns about possible reductions in provider payments if co-payments are waived.

Response: Lead Agencies retain the flexibility to determine their own policies on waiving co-payments. If a Lead Agency chooses to waive co-payments for preapproved populations outlined in this final rule or propose their own populations to waive in the CCDF Plan, we expect Lead Agencies not to decrease the amount paid to child care providers as a fiscal tradeoff. To ensure clarity on this point and be responsive to commenters' concerns that costs could be shifted from families to providers, we added a requirement at § 98.45(n)(5) that Lead Agencies demonstrate in their CCDF Plan how they will ensure they are not reducing the total payment (subsidy payment and co-payment) given to child care providers when establishing their sliding fee scale. This change applies to both the 7 percent requirement described earlier and any co-payments waived at the option of the Lead Agency. We encourage Lead Agencies to adopt policies that support child care provider operations that ensure providers do not experience a reduction in resources when serving families participating in the CCDF program.

Comment: One commenter recommended that we allow co-payments to be waived for families who are a member of a Tribe or Tribal consortium being served by a State or Territory CCDF Lead Agency.

Response: We acknowledge the potential benefits of this recommendation and note a State or Territory CCDF Lead Agency is allowed to propose in their CCDF Plan to waive co-payments for families who are a member of a Tribe or Tribal consortium.

Payment Practices. This final rule makes key changes at § 98.45(m) as redesignated, to improve CCDF payment practices in ways that will make it easier for child care providers to serve children with subsidies and increase parent choices in care. Lead Agency payment practices to providers are an important aspect of equal access and support the ability of providers to participate in CCDF, better cover the cost of care, and deliver high-quality care. This is consistent with section 658E(c)(2)(S) (42 U.S.C. 9858c(c)(2)(S)) of the Act, which requires Lead Agencies to establish ''payment practices of child care providers in the State that serve children who receive assistance under this subchapter [that] reflect generally accepted payment practices of child care providers in the State that serve children who do not receive assistance under this subchapter, so as to provide stability of funding and encourage more child care providers to serve children who receive assistance under this subchapter.'' The same provision also requires Lead Agencies, ''to the extent practicable, implement enrollment and eligibility policies that support the fixed costs of providing child care services by delinking provider reimbursement rates from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness.''

First, the final rule amends the language at § 98.45(m) as redesignated to require provider payment practices meet generally accepted payment practices used for families not participating in the CCDF program, unless the State or Territory can demonstrate that certain policies are not considered generally accepted payment practices in the private child care market for certain types of care. Previously, this language was only included in the regulatory text at (l)(3) when describing the requirement to pay providers based on a part-time or full-time basis and to pay for reasonable mandatory registration fees. Previous (l)(3)(i) and (l)(3)(ii) are now redesignated as (m)(3) and (m)(4). This is slightly restructured from the NPRM in response to comments that reinforced the multiple types of payment practices reflected in generally accepted payment practices for the private child care market. The rule allows narrow exceptions for different payment practices for certain types of providers, such as relative providers, because it is more typical for a private pay family to pay a relative provider on an hourly basis, or out-of-school time programs that do not typically charge private pay families for absence days. In those cases, the Lead Agency must justify that they are not generally accepted payment practices in the private child care market in the CCDF Plan as required at § 98.16(cc). However, though the rule allows Lead Agencies the option to demonstrate that in certain limited cases the policies included at (m) are not generally accepted payment practices in the private child care market, we do not expect to approve CCDF Plans that propose more than limited exceptions.

Second, the final rule amends § 98.45(m)(1) to require States and Territories ensure timely provider payments by paying providers participating in CCDF in advance of or at the beginning of the delivery of child care services to align with the Act's requirement that Lead Agencies use generally-accepted payment practices. Paying child care providers in advance or at the beginning of service provision, also known as prospective payment, is the norm for families paying privately (*e.g.,* payment for child care for month of February is due February 1st) because providers need to receive payment before services are delivered to meet payroll and pay rent. States and territories may meet this requirement at (m)(1) by paying child care providers in advance of providing child care services, (*e.g.,* paying the provider on the 27th day of the month prior to the upcoming month of service), or by paying providers on the first day of service, (*e.g.,* on Monday for that week of service).

The final rule removes the current option at previous § 98.45(l)(1) for Lead Agencies to reimburse child care providers within 21 days of receiving a completed invoice. Paying providers on a reimbursement basis places an upfront burden on providers serving families participating in CCDF and makes it difficult for providers to accept child care subsidies.

Lead Agencies have the flexibility to determine the length of the service period, and may choose to pay providers on a weekly, bi-weekly, or monthly basis, or another period as appropriate. As some families may choose to change child care providers in

the middle of a service period, Lead Agencies may delay the first payment to a new provider until the start of the next service period or adjust payments to providers following the change in a child's enrollment. This flexibility helps Lead Agencies avoid paying two child care providers for the same hours of care for the same child, which is prohibited by CCDF. However, if a child was enrolled with a provider, the Lead Agency cannot require, except in cases of fraud or intentional program violation by the provider, that child care provider to return the subsidy funds they received, and these funds are not considered overpayments for purposes of error rate calculations.

Some children may need to start receiving care during a service delivery period. We do not intend to limit when a child can begin receiving child care services, and States may pay child care providers retroactively for services that began in the middle of a service delivery period. Some children may need to start receiving care during a service delivery period. For the next complete service period, States must begin paying in advance or on the first day of the service period. States may also reimburse the child care provider a pro-rated amount that covers the partial time the child was enrolled.

Third, the final rule at (m)(2) as amended, requires States and territories to pay child care providers based on a child's authorized enrollment, to the extent practicable. Further, the final rule revises (m)(2) to require Lead Agencies who determine they cannot pay based on enrollment, to describe their alternative approach in the CCDF Plan, provide evidence that the proposed alternative reflects private pay practices for most child care providers in the State or Territory, and does not undermine the stability of child care providers participating the CCDF program. ACF only expects to approve alternative approaches in limited cases where a distinct need is shown.

The final rule deletes the previous options at former paragraph (l)(2)(ii) that allowed for full payment if a child attended at least 85 percent of authorized time, and paragraph (l)(2)(iii), which allowed for full payment if a child was absent five or fewer days a month. The Act requires States and Territories, to the extent practicable, to implement enrollment and eligibility policies that support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's attendance, which includes occasional absences due to holidays or unforeseen circumstances, such as illness. Neither of the two now-deleted options supported a provider's fixed operational costs, continuity of care for children, or reflect the norm for families paying privately, and going forward, ACF will not approve either option as an alternative approach to the requirement to pay providers based on enrollment.

While States and Territories must base provider payments on a child's enrollment under the final rule, Lead Agencies may continue to require child care providers submit attendance records to ensure children participating in CCDF are utilizing their subsidy. Moreover, this policy change does not affect the policy at § 98.21(a)(5)(i) that allows Lead Agencies to discontinue child care assistance prior to the next re-determination when there have been excessive unexplained absences despite multiple attempts to contact the family and provider, including prior notification of possible discontinuation of assistance.

Comment: Most commenters strongly supported the proposed changes to move to paying prospectively and based on enrollment, noting that the changes were long overdue and will have a significant impact on child care providers. We received many comments sharing the positive impact of prospective payments based on enrollment, and the negative financial impacts of late payments from States and the lost revenue from not being paid when a child is absent. Commenters also noted the proposed changes can help move closer to financing the true cost of providing high-quality care. Others reinforced the fact that current practices of paying after provision of services or paying based on attendance have led some child care providers to choose not to participate in the subsidy program or to limit the number of children receiving subsidies that they will serve at any given time.

A few commenters opposed the proposed changes and expressed concerns about the costs and systems changes that would be necessary to implement these changes, especially prospective payments. Others argued that Lead Agencies should maintain the flexibility to pay child care providers on a reimbursement basis and not cover all absence days.

Response: The rule will increase parents' options, make it easier for providers to accept subsidies, improve stability among child care providers serving children participating in CCDF, and aligns with generally accepted payment practices for private pay families. Therefore, we kept the changes mostly as proposed. In addition to requiring payment practices that meet generally accepted practices, the Act requires at section 658E(c)(4)(B)(iv) (42 U.S.C. 9858c(c)(4)(B)(iv)) that payments be made to child care providers in a timely manner. Paying child care providers after they have provided services is not timely and instead is destabilizing and overlooks the fact that providers have many bills that must be paid at the beginning of the month. As noted above, States and Territories will have the option to justify if paying certain types of providers in advance of services is not a generally accepted private pay practice in their CCDF Plans.

Comment: Some supporters noted these regulations will require many Lead Agencies to make IT and system updates that will take time and introduce new costs and questioned how the 60-day effective date would intersect with the likely timeline for these requirements.

Response: We recognize that many States and Territories will have to make regulatory and systems changes to implement these requirements. To address these concerns, this rule includes the opportunity for implementation extensions via temporary waivers for up to two years.

Comment: Some commenters asked for clarification related to the change at (m)(1) that requires Lead Agencies to pay providers in advance or at the beginning of services.

Response: The NPRM proposed to require ''prospective payments'' at (m)(1) but based on the comments received and further review of State prospective payment policies, we revised the regulatory language to better reflect what we meant by ''prospective payments'' and replaced that term with more descriptive language. The central meaning of the proposal remains unchanged. We have also clarified earlier that payments may be made up until the first day of providing care. This language is based off suggestions from commenters, review of state regulations in States that already pay child care providers in advance, and language included in agreements between private pay parents and child care providers. As noted above, this does not limit Lead Agencies in the start date for a child to receive child care services.

Comment: Some commenters asked us to define ''enrollment'' related to the proposed change at (m)(2)(i). This included asking us to state how many absences must be covered to consider a policy compliant with meeting payment based on enrollment.

Response: We decline to include a definition of ''enrollment'' in the

regulatory language. However, in response to comments, we revised the regulatory language to say payment must be based on ''*authorized* enrollment'' (italics denote language added in final rule). We also decline to enumerate the number of absences that would be covered because that is contradictory to the requirement to delink payment from absences and pay based on authorized enrollment. As noted earlier, § 98.21(a)(5)(i) allows Lead Agencies to discontinue child care assistance prior to the next re-determination when there have been excessive unexplained absences despite multiple attempts to contact the family and provider, including prior notification of possible discontinuation of assistance.

Comment: Some commenters requested we provide specific examples of policies that would be acceptable alternatives to paying based on enrollment.

Response: We decline to specify what alternatives would be allowable. It is the Lead Agency's responsibility to explain and justify how their alternative approach would not destabilize child care providers. ACF will review individual justifications, including data and other evidence, during CCDF Plan approval. As noted above, ACF will not approve alternatives that mirror the two now removed options (*i.e.,* paying the full amount if a child attends at least 85 percent of authorized time or if a child has five or fewer absences).

Comment: A few commenters requested clarification as to whether child care providers must be paid for days providers are closed for in-service or professional development activities.

Response: Parents that pay privately for child care are usually required to pay for days when providers are closed for holidays, in-service, or professional development activities. Lead Agencies are expected to cover the days providers are closed for holidays and other training and in-service days as part of paying a provider based on the child's authorized enrollment, unless the Lead Agency can provide evidence this would not be considered a generally-accepted payment practice for the private child care market.

Comment: We requested comments and data about generally accepted payment practices and whether those proposed in the NPRM truly reflected generally accepted payment practices. Commenters widely agreed that paying in advance and based on enrollment reflected generally accepted payment practices in their areas, including child care providers, national organizations, and Lead Agencies. The National Association for the Education of Young Children (NAEYC) provided data from a survey conducted during the comment period that found 88 percent of providers stated that private pay families in their care pay prospectively for care. A survey of family child care providers found that 59 percent of programs received payment prospectively.

Response: We appreciate commenters providing data and support for these policies, which reinforce that prospective payment and enrollment-based payment are generally-accepted payment practices for family child care and center-based care in the private pay market. We have retained the proposals with minor adjustments to the regulatory language.

Comment: We requested comments on other policies that may help build supply and stabilize the child care market. Commenters suggested a range of policies, including paying a child care provider by classroom or licensed capacity not by individual slots, setting different requirements for providers depending on the age of children in their care, and investing in child care facilities.

Response: We appreciate these suggestions and encourage Lead Agencies to consider them as they continue to address inadequate child care supply. Some changes in other parts of this final rule, including revising the definition of major renovation to make it easier to invest in facilities improvements, reflect the goals of these comments. However, we have chosen not to make additional specific regulatory changes in this section.

Comment: Some commenters noted that prospective payment and paying based on enrollment may not reflect generally accepted payment practices for certain types of care for providers, such as for school-age care or child care provided by relatives.

Response: We acknowledge there may be some variation in how some types of providers are paid by private pay families, and therefore, we have clarified that Lead Agencies may propose limited exceptions to the requirements at § 98.45(m), if they can justify those exceptions reflect generally accepted payment practices for specific provider types or categories in the private pay market.

Comment: Some commenters were concerned about the administrative burden associated with recoupment of funds in cases of payments for absence days.

Response: When paying based on enrollment, payment for absences is not considered overpayment and does not get recouped, thus administrative burden should not increase because of this policy. Because Lead Agencies will not have to closely align attendance records with payments, we expect a decrease in administrative burden for Lead Agencies and child care providers. Lead agencies are expected to follow their own processes to ensure providers are paid appropriately.

Comment: Some commenters expressed concerns about double paying child care providers for the same period if a child switches providers partway through the service period.

Response: Lead Agencies are expected to implement processes to address if a child changes providers during a service period. Lead Agencies may choose to require providers to certify their expected enrollment prior to receiving their payment in advance and to submit documentation within a certain period to allow for adjustments for children who are newly enrolled or disenrolled in a program.

Additional Payment Practices. This final rule newly adds § 98.45(n) to address Lead Agency payment practices that are only applicable to the child care subsidy system and do not have private pay equivalents. In such instances, a requirement to meet generally accepted payment practices under (m) is inappropriate.

The final rule moves three existing provisions from (m) as redesignated to new paragraph (n). Paragraph (n)(1), redesignated from (l)(4), requires Lead Agencies to ensure that child care providers receive payment for services in accordance with a written agreement or authorization for services; (n)(2), redesignated from (l)(5), requires child care providers receive prompt notice of changes to a family's eligibility status that may impact provider payments; and (n)(3), redesignated from (l)(6), requires that provider payment practices include timely appeal and resolution processes for any payment inaccuracies or disputes.

The final rule adds at § 98.45(n)(4) that Lead Agency payment practices may include taking precautionary measures when a provider is suspected of fraud. For example, it may be prudent in such cases for the Lead Agency to pay a provider retroactively as part of a corrective action plan or during an investigation.

Comment: Commenters expressed support for this allowance.

Response: We agree Lead Agencies need to have the flexibility to adjust policies when providers may be suspected of fraud and have kept the regulatory language as proposed.

This final rule adds § 98.45(n)(5) to require States and Territories demonstrate in their CCDF Plan how they are ensuring they are not reducing the total payment (subsidy payment amount and co-payment) given to child care providers when implementing the requirement at § 98.45(l) to limit co-payments to 7 percent of family income and waiving co-payments for additional families. A more detailed discussion of this addition, including related comments and responses, is earlier in this preamble at § 98.45(l).

Subpart F—Use of Child Care and Development Funds

Subpart F of the CCDF regulations establishes allowable uses of CCDF funds related to the provision of child care services, activities to improve the quality of child care, administrative costs, matching fund requirements, restrictions on the use of funds, and cost allocation. This final rule includes several changes in Subpart F, including requiring some use of grants or contracts for direct services and removing the obsolete phase-in of the quality set-aside.

§ 98.50 Child Care Services

This final rule adds clarifying language at § 98.50(a)(3) that some grants or contracts must be used for slots for children in underserved geographic areas, infants and toddlers, and children with disabilities. Additionally, the final rule further clarifies that grants solely to improve the quality of child care services would not satisfy the requirement at § 98.30(b). This clarifying language is also added to the final rule at new paragraph § 98.50(b)(4).

Comment: As discussed in Subpart D, some commenters wanted clarification as to the definition of ''grants and contracts'' and whether the requirement is specific to direct services.

Response: The final rule clarifies across sections §§§ 98.16(z), 98.30(b), and 98.50(a) that the requirement is for grants ''or'' contracts and is in reference to direct services. This clarification responds to some Lead Agencies and other commenters noting the appropriate mechanism for grants or contracts is different in each jurisdiction. All Lead Agencies define the terms ''grants'' and ''contracts'' differently, with each term carrying different requirements and processes. Due to the varying nature of how Lead Agencies define these terms, it would be impractical to provide a federal definition. Additionally, in response to comments asking for clarification about what counts as a direct service and if quality set-aside investments could count toward the grant or contract requirement, the final rule clarifies the definition of direct services to explicitly include grant or contracted slots. Specifically, additional language at § 98.50(a)(3) adds the term ''for slots'' after ''grants or contracts'' and excludes grants solely to improve the quality of child care services like those in § 98.50(b) from meeting the requirement set out in § 98.30(b). New paragraph § 98.50(b)(4) clarifies these quality amounts cannot be used to satisfy the requirement at § 98.30(b) for grant or contracted slots. A final change was made to the financial reporting requirement at § 98.65(h)(3) to clarify that ''direct services'' can be for ''both grant or contracted slots and certificates.''

Comment: Some commenters expressed concerns about program integrity implications of requiring grants or contracts and asked specifically for ACF to clarify how provider changes should be handled.

Response: We share commenters' interest in strong program integrity and defer to Lead Agencies to define these parameters under their already existing systems. ACF is committed to providing technical assistance to Lead Agencies related to best practices in grants or contracting and in monitoring grants or contracts.

Comment: Several comments noted that implementation of policies described (*e.g.,* cost estimation model, presumptive eligibility) would necessitate feedback from people with direct experience and need to be adjusted to ensure that they work for families and providers. In addition, many parents, providers, and organizations representing parents and providers who participate in child care subsidy programs commented on how proposed policies would impact their experience, including expressing the need to be directly engaged to support successful implementation.

Response: We agree that people with direct experience in the child care subsidy system, quality initiatives, and the child care market are critical stakeholders in successful implementation of CCDF policies and practices. We have added language to clarify that quality set-aside funds may be used to engage families and providers with direct experience, including compensation for time and related expenses.

Quality Set-aside. Section 98.50(b)(1) reflects section 658G(a)(2)(A) of the Act (42 U.S.C. 9858e(a)(2)(A)), which includes a phased-in increase to the percent of expenditures states and territories must spend on activities to improve the quality of child care. The phase-in ended on September 30, 2020, with the statute maintaining a minimum 9 percent quality set-aside thereafter. The final rule removes the phase-in schedule for the quality set-aside at § 98.50(b)(1) because it is outdated. This update does not impact the current requirement for States and Territories to spend at least 9 percent of their total expenditures, not including State maintenance of effort funds, on quality activities. The final rule adds clarifying language to affirm that Lead Agencies are encouraged to engage parents and providers with direct experience in the child care subsidy system and with quality initiatives because successful implementation of this rule and other CCDF provisions depends on user feedback. The final rule also affirms that quality funds can be used for expenses related to such engagement.

Similarly, the final rule strikes the outdated language at § 98.50(b)(2) that stemmed from Section 658G(a)(2)(B) of the Act (42 U.S.C. 9858e(a)(2)(B)) and included a new permanent requirement for States and Territories to spend at least 3 percent of total expenditures (not including State maintenance of effort funds) on activities to improve the quality and supply of child care for infants and toddlers but delayed the effective date of this requirement until FY 2017. This effective date is no longer necessary in the regulatory language and is now deleted. This update does not impact the current requirement for States and Territories to spend at least 3 percent of their total expenditures (not including State maintenance of effort funds) on activities to improve the quality and supply of child care for infants and toddlers.

Mandatory Funds. The final rule also amends § 98.50(e) to update regulations to align with policies implemented as part of the ARP Act of 2021 (Pub. L. 117–2). In accordance with subtitle I, section 9801 of the ARP Act, Territories received permanent CCDF mandatory funds for the first time in FY 2021. Since CCDF did not provide Territories with CCDF mandatory funds prior to FY 2021, the CCDF regulations did not include requirements of how Territories must spend CCDF mandatory funds. We made this change to codify the requirement included in the approved instructions for completing to the ACF–696 Financial Reporting Form for CCDF State and Territory Lead Agencies [85] that

[85] Instruction for Completion of Form ACF–696 Financial Reporting Form for the Child Care and Development Fund (CCDF) State and Territory Lead Agencies. Office of Management and Budget (OMB)

Lead Agencies spend at least 70 percent of CCDF mandatory and matching funds on specific populations related to TANF receipt (families receiving TANF, families transitioning from TANF, and families at-risk of becoming dependent on TANF) applies to Territories, as well as States.

Comment: While one commenter incorrectly stated OCC proposed an increase in quality spending at § 98.50(b)(1) or § 98.50(b)(2), other commenters affirmed these updates helped clarify and did not change existing requirements. Additionally, we received several comments in support of updating the regulation at § 98.50(e) to reflect mandatory funding that has been available to Territories since 2021.

Response: As the regulatory language simply removes obsolete language, we have retained the language as proposed.

Subpart G—Financial Management

The focus of Subpart G is to ensure proper fiscal management of the CCDF program, both at the federal level by ACF and the Lead Agency level. The final rule changes to this section include adding recent statutory changes to the CCDF mandatory funds and revising CCDF expenditure reporting requirements.

§ 98.60 Availability of Funds

To reflect that Territories began receiving annual mandatory funds in FY 2021 due to provisions in the ARP Act, this final rule makes two conforming changes at § 98.60(a) to specify where the regulations address mandatory funds for States and where they address mandatory funds for Territories.

This final rule also includes a conforming change at paragraph § 98.60(d)(3) to clarify that Territories must obligate mandatory funds in the fiscal year in which they were granted and must liquidate no later than the end of the next fiscal year. This aligns with CCDF State policy and is needed to clarify new requirements added in the ARP Act. The provisions at paragraphs (d)(4) through (8) have been renumbered accordingly. We did not receive comments on these proposed changes.

§ 98.62 Allotments From the Mandatory Fund

This final rule includes a conforming change at § 98.62(a) to align this regulation with previously discussed changes made to the Social Security Act in the ARP Act. We updated the statutory reference to the Social Security Act to specify the provision referenced section 418(a)(3)(A) (42 U.S.C. 618(a)(3)(A)), and we deleted the reference to the amount reserved for Tribes pursuant to paragraph (b) to reflect that the ARP Act permanently changed the allocation of mandatory funds for Indian Tribes and Tribal organizations to be based on the amount set at section 418(a)(3)(B) of the Social Security Act (42 U.S.C. 618(a)(3)(B)) and no longer a percent of the total allocation.

Finally, we added a new paragraph (d) to incorporate changes made in the ARP Act allocating mandatory funds to the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Marianas Islands. Section 418(a)(3)(C) of the Social Security Act (42 U.S.C. 618(a)(3)(C)) requires funds to be allocated based on the Territories' ''respective needs.'' In allotting these funds in FY 2021, ACF used the same formula used to allocate funds from the Discretionary funds at § 98.61(b). This final rule codifies that reallotment formula in the regulations. The regulation specifies that the amount of each Territory's mandatory allocation is based on (1) a Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of children under five years of age in all Territories; and (2) an Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the territory. Paragraph § 98.62(d)(2)(i) requires per capita income to be equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time the determination is made and determined every two years.

Comment: We received several comments on the proposed additions to § 98.62 on allotments from the mandatory fund to Indian Tribes and Tribal organizations. All comments on this proposed change expressed concerns about funding levels for Tribal CCDF programs. Some commenters acknowledged that the mandatory set-aside was put forth by Congress in the ARP Act but wished to express disagreement with this change.

Response: This rule makes no changes to funding levels for Tribal Nations. The rule simply reflects the permanent changes made in the ARP Act, such that the allocation of mandatory funds for Tribes be based on the amount set at section 418(a)(3)(B) of the Social Security Act, rather than a percent of the total allocated funds. This change was made by Congress in 2021 and reflected a 71 percent increase in mandatory CCDF funds for Tribes.

§ 98.64 Reallotment and Redistribution of Funds

This final rule updates § 98.64(a) to reflect that Territories began receiving mandatory funds in FY2021 due to the ARP Act. The regulation specifies that Territory mandatory funds are subject to redistribution and that mandatory funds granted to Territories must be redistributed to Territories. It further clarifies that only Discretionary funds awarded to Territories are not subject to reallotment and that Discretionary funds granted to the Territories that are returned after being allotted are reverted to the federal government. This final rule adds a new paragraph (e) to codify these procedures for redistributing Territory mandatory funds. We did not receive comments on these proposals.

§ 98.65 Audits and Financial Reporting

This final rule adds clarifying language at § 98.65(h)(3) that grants or contracts for child care services are considered a direct service expenditure.

Comments: As discussed in Subpart F, many commenters wanted clarification about the definition of grant or contract for direct service and raised confusion about whether this definition of direct service includes grant or contracted slots.

Response: In response to comments, the final rule clarifies at § 98.65(h)(3) that grant or contracted slots are considered a direct service. ACF will also make changes to the ACF–696 instructions to further clarify this reporting requirement and how Lead Agencies should account for grant or contracted slots in financial reporting.

Subpart H—Program Reporting Requirements

Subpart H of the regulations includes administrative reporting requirements for Lead Agencies.

§ 98.71 Content of Reports

Data Amounts Charged Above Co-payment. This final rule deletes the data element at § 98.71(a)(11) that required Lead Agencies to report any amount charged by a child care provider to a family receiving CCDF subsidy more than the co-payment set by the Lead Agency in instances where the provider's price exceeds the subsidy payment amount. This data element created a burden on Lead Agencies and child care providers and was never implemented. Instead, we have revised

#0970–0510. *https://www.acf.hhs.gov/sites/default/files/documents/occ/instructions_for_completion_of_form_acf-696_financial_reporting_form-for_ccdf_state_Territory_lead-agencies.pdf.*

§ 98.45(f)(1) to include this information in what States and Territories must report in their market rate survey or alternative methodology reports related to providers charging families above the State set co-payment. In addition, States must continue to track through their market rate survey or approved alternative methodology or through a separate source how much CCDF child care providers charge amounts to families more than the required co-payment as required at § 98.45(d)(2)(ii) and report on this data in their CCDF Plans as required at § 98.45(b)(5).

This reporting requirement at § 98.71(a)(11) was added to the CCDF regulations in 2016, but it was never added as a data element to the ACF–801 (monthly case-level report) because when ACF proposed adding the data element to the ACF–801 as part of the Paperwork Reduction Act (PRA) process in 2018, five State CCDF Lead Agencies submitted comments objecting to the proposed new data element. Four States indicated that the element would create a reporting burden for families and/or providers, and that it would be challenging to collect and report accurate data. A State also argued that the new element was duplicative of information that States are required to report in their CCDF Plans, and would involve significant costs, especially for States with county administered CCDF programs.

We requested comment on whether the data element should be removed, including potential implications of either instituting or removing the requirement.

Comment: Most commenters on this proposal opposed deleting the element. They noted that with the proposal to cap family co-payments and included in this final rule at § 98.45(l) that it was critical to collect data about how much providers are charging families above the co-payment.

A few commenters expressed support for the proposal to delete the data element, with one Lead Agency stating, ''it is very difficult to collect and extract the referenced data due to the wide variation in provider price points and co-payments.''

Response: We agree with commenters the data intended to be captured by the original regulation is important to understand how much families receiving subsidies must pay out of pocket for child care. However, the ACF–801 is not the best data collection form to collect this information because it provides monthly case records for all children participating in CCDF. The information for the ACF–801 is mostly collected during a child's eligibility determination and through state data systems. To collect the information for this data element, the State would have to create new reporting for child care providers, adding new burdens on child care providers. Further, these data do not need to be monthly to be useful. Therefore, this rule revises § 98.45(f)(1) to ensure such data is collected in a more appropriate manner. OCC will continue to collect and review State and Territory policies regarding allowing child care providers to charge the difference between the state subsidy rate and the provider's private pay rate through the CCDF Plan pursuant to § 98.45(b)(5).

The final rule makes conforming renumbering changes to (a)(12) through (22).

Presumptive Eligibility. This final rule adds a data element at § 98.71(b)(5) to require Lead Agencies implementing presumptive eligibility to report in the annual aggregate report (ACF–800) the number of presumptively eligible children ultimately determined fully eligible, the number who fail to complete documentation for full eligibility and the number who are determined ineligible after full verification. Comments and responses were discussed earlier under the related requirement at § 98.21(e).

The final rule makes conforming renumbering changes to (b)(6) through (7).

Subpart I—Indian Tribes

This subpart addresses requirements and procedures for Indian Tribes and Tribal organizations applying for or receiving CCDF funds and serves as the Tribal summary impact statement as required by Executive Order 13175.[86] CCDF currently provides funding of about $557 million annually[87] to approximately 265 Tribes and Tribal organizations directly or through consortia arrangements that administer child care programs for approximately 520 federally recognized Indian Tribes. Tribal CCDF programs are intended for the benefit of Indian children, and these programs serve only Indian children. The Tribal CCDF program plays a crucial role in child care access and affordability. Below we discuss the Tribal CCDF program, Tribal consultation, and regulatory changes impacting this Subpart.

The Act is not explicit in how many of its provisions apply to Tribes so ACF traditionally applies requirements of the Act to Tribes through regulation. In the years since the 2016 final rule, Tribal Lead Agencies have taken great efforts to implement CCDF programs in accordance with the regulations. Most CCDF Tribal Lead Agencies receive relatively small award sizes of less than $250,000 and have infrastructure and internal capacity that varies greatly from CCDF State Lead Agencies. ACF continues to hear from Tribes about needing additional program flexibilities to provide high quality child care to Indian children and families. The changes in this final rule as they apply to Tribal Lead Agencies are heavily informed by this feedback as well as the formal consultation conducted during the NPRM comment period. In addition, to provide a more in-depth and long-term opportunity for feedback on the Tribal CCDF program, ACF issued a Tribal Request for Information (RFI) that was open for comment from July 27, 2023 to January 2, 2024.[88]

Tribal consultation and comments. ACF is committed to consulting with Tribal Nations prior to promulgating any regulation that has Tribal implications. Immediately following publication of the NPRM, ACF hosted a national webinar specifically for Tribal Lead Agencies to outline and discuss the proposed changes during the comment period. ACF held a formal consultation session virtually in July 2023 with Tribal leaders and Tribal CCDF staff to discuss the impact of the proposed regulations on Tribes. Tribes and Tribal organizations were informed of these events through letters to Tribal leaders and announcements to Tribal CCDF administrators. ACF also distributed materials specifically addressing the impact of the proposed rule on Tribes. ACF published a consultation report on September 5, 2023, which was posted as a supplemental document in the **Federal Register** on August 20, 2023 and includes information on consultation attendees as well as their specific comments.[89] This final rule was informed by these conversations and comments. Most of the testimony and dialogue included support for the NPRM proposals, with some concerns raised related to fraud determinations, implementation timelines, technical and financial resources to implement the proposed changes. Comments related to fraud and intentional program

[86] *https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments.*

[87] FY23 allocation *https://www.acf.hhs.gov/occ/data/gy-2023-ccdf-tribal-allocations-estimated-pending-final-child-count.*

[88] *https://www.federalregister.gov/documents/2023/07/27/2023-15930/request-for-information-meeting-the-child-care-needs-in-tribal-nations.*

[89] *https://www.regulations.gov/document/ACF-2023-0003-1665.*

violations can be found earlier in this preamble as part of the discussion about presumptive eligibility at § 98.21.

Unless explicitly stated in this Subpart, regulations in the 2016 final rule remain in effect for Tribal Lead Agencies. Below we discuss implications for 102–477 programs followed by a discussion of the changes to §§ 98.81, 98.83, and 98.84 in this final rule.

102–477 programs. We note that Tribes continue to have the option to consolidate their CCDF funds under a plan authorized by the Indian Employment, Training and Related Services Consolidation Act of 2017 (Pub. L. 115–93), originally established in 1992 (Pub. L. 102–477).[90] This law allows federally recognized Tribes and Alaska Native entities to integrate federal grant programs for employment, training, and related services they provide to their communities into a single program plan, budget, and reporting system to address Tribal priorities. ACF publishes guidance for Tribes wishing to consolidate CCDF under the authority created in Public Law 102–477.[91] However, the Bureau of Indian Affairs (BIA) within the Department of Interior (DOI) is the lead federal agency for implementing this program.

§ 98.81 Application and Plan Procedures and § 98.83 Requirements for Tribal Programs

Sliding fee scale. This final rule retains the proposed revision at §§ 98.81(b)(6)(vii) and 98.83(d)(1)(vi) to exempt all Tribal Lead Agencies from the requirement to establish a sliding fee scale and from the provision at § 98.45(l) as redesignated to require parents to pay a co-payment. Therefore, all Tribal Lead Agencies newly have the flexibility to provide CCDF assistance to eligible families without any co-payment. Previously, Tribes with medium and large allocations were subject to the requirements at § 98.45(l) while Tribes with small allocations had the flexibility to exempt all families from co-payments.

Comment: Commenters supported this exemption. Some commenters were supportive of the exemption but were concerned with their ability to implement the change without new resources.

Response: Eliminating co-payments for parents participating in CCDF is an option for Tribal Lead Agencies but not a requirement. Tribes concerned by funding constraints or other matters will have the flexibility to require co-payments if they choose and their established sliding fee scale will not be subject to any requirements outlined in this final rule. If a Tribe chooses to require a parent co-payment, we encourage the required amount from families to be as minimal as possible and under 7 percent of a family's income.

Grants and contracts. This final rule maintains the proposed revisions at §§ 98.81(b)(6)(x) and 98.83(d)(1)(i) to exempt all Tribal Lead Agencies from the requirement to use some grants or contracts to provide direct services for underserved geographic areas, infants and toddlers, and children with disabilities as required for States and territories at §§ 98.16(z), 98.30(b)(1), and 98.50(a)(3). Tribal Lead Agencies vary significantly in how they administer the CCDF subsidy program and a requirement to use grants or contracts is not feasible. Tribal Lead Agencies continue to have the option to use this funding mechanism for direct services. We did not receive comments on this area and have retained the language as proposed.

Provider Payment Practices. The final rule at § 98.81(b)(6)(xii) exempts all Tribal Lead Agencies from the requirement to implement provider payment practices in accordance with § 98.16(cc).

Comment: While commenters were supportive of proposed changes to provider payment practices at § 98.45(m), they also expressed concern about Tribal Lead Agencies' ability to implement the changes, especially considering the variability in Tribal Lead Agencies infrastructure to make the necessary systems changes for these policies.

Response: Based on these comments and our focus on providing additional flexibility for Tribal Lead Agencies given the range of infrastructure and capacities, we have chosen to exempt all Tribal Lead Agencies from the requirement to have provider payment practices that reflect generally accepted payment practices, including prospective payments based on enrollment. It is not clear whether these are generally accepted practices across Tribal communities, and the changes included in this final rule remain at the discretion of the Tribal Lead Agency. However, ACF strongly encourages Tribal Lead Agencies to ensure providers are paid in a timely manner and for children's occasional absences.

Quality Funds. Section 98.83(g)(1) previously included a phased-in increase to the percent of expenditures Tribal Lead Agencies must spend on activities to improve the quality of child care. The phase-in ended on September 30, 2020. The final rule removes the phase-in schedule for the quality set-aside at § 98.50(b)(1) because it is outdated. This update does not impact the current requirement for all Tribes to spend at least nine percent of their total expenditures on quality activities. Similarly, the final rule strikes the outdated language at § 98.83(g)(2), which included a new permanent requirement for Tribes with medium and large CCDF allocations to spend at least three percent of total expenditures on activities to improve the quality and supply of child care for infants and toddlers and delayed the effective date of this requirement until FY 2017. This date is no longer necessary in the regulatory language and is now deleted. This update does not impact the current requirement for Tribes with medium and large allocations to spend at least three percent of their total expenditures on activities to improve the quality and supply of child care for infants and toddlers. We did not receive comments on these technical changes.

§ 98.84 Construction and Renovation of Child Care Facilities

Section 98.84 describes the procedures and requirements for Tribal construction or renovation of child care facilities. This final rule extends the deadline for liquidating construction and major renovation funds, specifically by establishing a three-year obligation period and subsequent two-year liquidation period for construction and major renovation funds.

Comment: We received a few comments on this proposal, all of which were supportive. Commenters emphasized that construction and major renovation projects can often take many years to plan and execute and the additional time would help to ensure that facilities are successfully built on Tribal lands.

Response: We appreciate the feedback on this proposed change and are glad to see support for this proposal. We understand that construction and renovation of facilities can be vital to maintaining and increasing high quality child care for children and families. We also recognize that construction projects are complex, expensive, and often long-term, and can therefore take extended time to spend allotted funds. Therefore, we have maintained the proposed change to allow Tribal Lead Agencies up to 5 years to liquidate construction and major renovation funds, which

[90] *https://congress.gov/115/plaws/publ93/PLAW-115publ93.pdf.*

[91] *https://www.acf.hhs.gov/occ/policy-guidance/consolidate-ccdf-under-indian-employment-training-and-related-services.*

includes three years to obligate funds and an addition two years to liquidate.

Previously, Tribal construction and major renovation funds did not have an obligation deadline. This final rule establishes a three-year obligation period to meet the statutory provision that limits grants to Tribal Lead Agencies to three years. As a Lead Agency cannot change the purposes of the funds after the obligation period, we have determined that we can allow additional time beyond the three years for liquidation.

Comment: We asked for feedback on the potential establishment of guardrails to prevent circumvention of the obligation and liquidation requirements. Some commenters expressed a mix of support for increased flexibility with concerns about unnecessary proposed guardrails.

Response: We appreciate the comments in response to this request. The final rule does not include additional limits related to major renovation and construction.

Subpart J—Monitoring, Non-Compliance, and Complaints

This final rule does not make any changes to Subpart J.

Subpart K—Error Rate Reporting

Subpart K details requirements for the reporting of error rates in the expenditure of CCDF grant funds by the 50 States, the District of Columbia, and Puerto Rico. In addition to the regulatory requirements at subpart K, details regarding error rate reporting requirements are contained in forms and instructions that are established through the Office of Management and Budget's (OMB) information collection process. Under subpart K, this final rule makes changes to the content of error rate reports.

§ 98.102 Content of Error Rate Reports

To strengthen oversight and monitoring of program integrity risks, this final rule clarifies requirements at § 98.102 for the State Improper Payments Corrective Action Plan (ACF–405). The final rule amends § 98.102(c)(2) to expand the required components of error rate corrective action plans. Specifically, it requires at amended paragraph (c)(2)(ii) that corrective action plans include the root causes of errors as identified in the Lead Agency's most recent ACF–404 Improper Payment Report and other root causes. This change is based on recommendations from the Government Accountability Office (GAO) 20–227, *Office of Child Care Should Strengthen Its Oversight and Monitoring of Program-Integrity Risks.* The final rule also separates previous provision at (c)(2)(ii) into two provisions, with amended paragraph (c)(2)(iii) requiring detailed descriptions of actions to reduce improper payments and the name and/or title of the individual responsible for actions being completed and amended paragraph (c)(2)(iv) requiring milestones to indicate progress towards action completion and error rate reduction. Additionally, we revised paragraph (c)(2)(v), as redesignated, to clarify that the penalty at paragraph (c)(4) is tied to the Lead Agency's completion of their action steps within one year as described in the timeline in their corrective action plan approved by the Assistant Secretary.

The final rule also adds language at paragraph (c)(3) to clarify that the reference to ''subsequent progress reports'' includes State Improper Payments Corrective Action Plans (ACF–405). Progress reports, including the State Improper Payments Corrective Action Plan (ACF–405), will be required until the Lead Agency's improper payment rate no longer exceeds the error rate threshold designated by the Assistant Secretary, which is currently 10 percent. We added language at (c)(4) to strengthen OCC's ability to assess a penalty if the State does not take action steps ''as described.'' We added the word ''as'' to clarify that they should not only take the action steps described, but that they should take them ''*as* described.'' The final rule specifies it will be at ACF's discretion to impose a penalty for not following them ''as described.''

Comment: One commenter expressed support for the proposed change and recommended that OCC include the title, as opposed to the individual's name, of the person responsible for the action to be included because of staffing changes that occur over time.

Response: We appreciate the commenter's recommendation and recognize that staff changes often happen during the corrective action period. Therefore, we have revised the proposed language to specify that the corrective action plan must identify the name and/or title of the individual responsible at § 98.102(c)(2)(iii).

Comment: One commenter noted that this would be unnecessarily burdensome for Lead Agencies because the ACF–404 reports already allows for states to detail the root causes of errors.

Response: OCC is not expanding the ACF–404, but rather, we are providing a clarification around the requirements for the ACF–405. The updated ACF–405 provides a way for states to connect the root causes of error already identified in the ACF–404 with the action steps in the ACF–405. We do not expect this additional component to create a significant burden and that the value of the addition outweighs the burden.

VII. Regulatory Process Matters

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.,* as amended) (PRA), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. As required by this Act, we will submit any proposed revised data collection requirements to OMB for review and approval.

The final rule modifies several previously approved information collections, but ACF has not yet initiated the OMB approval process to implement these changes. ACF will publish **Federal Register** notices soliciting public comment on specific revisions to those information collections and the associated burden estimates and will make available the proposed forms and instructions for review.

CCDF title/code	Relevant section in the proposed rule	OMB control No.	Expiration date	Description
ACF–118 (CCDF State and Territory Plan).	§§ 98.14, 98.15, and 98.16 (and related provisions).	0970–0114	02/29/2024	The final rule adds new requirements which States and Territories are required to report in the CCDF Plans.

CCDF title/code	Relevant section in the proposed rule	OMB control No.	Expiration date	Description
ACF–118–A (CCDF Tribal Plan) Part I and Part II.	§§ 98.14, 98.16, 98.18, 98.81, and 98.83 (and related sections).	0970–0198	4/30/2025	The final rule adds new requirements which Tribal lead agencies with medium and large allocations are required to report in the CCDF Plans.
ACF–405 (Error Rate Corrective Action Plan)	§ 98.102	0970–0323	01/31/2025	The final rule modifies this information collection to add new components to the corrective action plans.
ACF–800 (CCDF Annual Aggregate Child Care Data Report- States and Territories).	§ 98.71	0970–0150	03/31/2025	The final rule modifies this existing information collection to require States and Territories report on data related to presumptive eligibility.
ACF–801 (CCDF Monthly Child Care Report—States and Territories).	§ 98.71	0970–0167	04/30/2025	The final rule removes the regulatory requirement to report information on additional fees charged to families, where applicable. This data element has never been added to the ACF–801 form.
Consumer Education Website and Reports of Serious Injuries and Deaths.	§§ 98.33, 98.42	0970–0473	05/31/2026	The final rule modifies this information collection to require posting information about parent co-payments.

The table below provides current approved annual burden hours and estimated annual burden hours for these existing information collections that are modified by this final rule.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Current approved average burden hours per response	Current annual burden hours	Estimated average burden hours per response based on final rule	Estimated annual burden hours based on final rule
ACF–118 (CCDF State and Territory Plan)	56	1	200	3,733	205	3,827
ACF–118–A (CCDF Tribal Plan)	265	1	144	11,448	147	12,985
ACF–405 (Error Rate Corrective Action Plan)	5	2	156	520	156	520
ACF–800 (CCDF Annual Aggregate Child Care Data Report- States and Territories)	56	1	40	2,240	40	2,240
ACF–801 (CCDF Monthly Child Care Report—States and Territories)	56	4	25	5,600	25	5,600
Consumer Education Website	56	1	300	16,800	315	17,640

We did not receive any public comments on these burden estimates, which were included in the NPRM.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act) requires federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term ''small entities,'' as defined in the RFA, 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. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3 percent impact on revenue on at least 5 percent of small entities. The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96–354), that this rule does not result in a significant impact on a substantial number of small entities, as this rule primarily impacts States, territories, and tribes receiving federal CCDF grants. Therefore, an initial regulatory flexibility analysis is not required for this document.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by state, local or tribal governments, in the aggregate, or

the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2023 the threshold is approximately $177 million. When such a statement is necessary, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule. The regulatory impact analysis includes information about the costs of the final regulation. As described in the preamble to this final rule, several of the changes are at the option of states, territories, and tribes. In addition, states, territories, and tribes receive over $11 billion annually in federal funding to implement the program.

Executive Order 13132

Executive Order 13132 requires federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This rule does not have substantial direct impact on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule does not pre-empt state law. In large part, the changes included in the final rule are adopting practices already implemented by many states or are increasing flexibilities in administering the CCDF program. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Assessment of Federal Regulations and Policies on Families

Assessment of Federal Regulations and Policies on Families Section 654 of the Treasury and General Government Appropriations Act of 2000 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF believes it is not necessary to prepare a family policymaking assessment (see Pub. L. 105–277) because the action it takes in this final rule will not have any impact on the autonomy or integrity of the family as an institution.

VIII. Regulatory Impact Analysis

We have examined the impacts of the rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). This analysis identifies economic impacts that exceed the threshold for significance under Section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094.

We conducted an initial Regulatory Impact Analysis (RIA) in the Notice of Proposed Rulemaking to estimate and describe the expected costs, transfers, and benefits resulting from the proposed rule. This included evaluating State and Territory polices in the major areas of policy change: Eligibility, Payment Rates and Practices, and Family Co-payments. Due to limitations in data, we did not include Tribal policies in our analysis.

Based on feedback received during the public comment period, we have further refined these estimates for the final rule. Some of the more substantial changes made in this version of the RIA include:

- Systems Costs: This RIA now includes a systems cost estimate to account for possible IT changes needed to implement requirements in the final rule;
- Administrative Data: All the calculations in this RIA have been updated to use FY 2021 Preliminary ACF–801 data, which was not available when writing the NPRM; and
- Delineating between Required and Optional Policies: The RIA includes projections for both policies required by the rule and for those that are at Lead Agency option. This version of the RIA has been restructured to better clarify which policies are required and which are optional.

A. Context and Assumptions

All changes in this rule are allowable costs within the CCDF program and we expect activities to be paid for using CCDF funding. Each year, approximately $11.6 billion in federal funding is allocated for CCDF.[92] In addition to the federal funding, States may contribute their own funds to access additional federal funds, increasing total FY 2023 CCDF funding to about $13.7 billion. At the same time, Federal funding for child care has never been sufficient to serve all eligible children and support consistent access to high quality programs. Some States have also been increasing state investment in child care beyond the required levels, but even with combined federal and state resources, states have to make difficult trade offs. Without additional funding, these trade offs will continue as Lead Agencies implement provisions in this rule, including balancing quality improvements, enrolling additional children, and investing in polices that promote stability for enrolled families. However, Lead Agencies have flexibility in how they implement many of the provisions and may adjust other policies to offset or account for additional costs associated with policy changes. They may also draw from other federal funding streams to support the policy changes included in this rule, including through allowable transfers from TANF.

1. Baseline

To get an accurate account of the costs, transfers, and benefits of this rule, we first established a baseline for current CCDF State and Territory practices. The policies described in this RIA represent the most current information available regarding the policies that were in place at the time that this final rule was published. The Lead Agency data and policies described in this RIA are gathered primarily from:

- *ACF–801 (2021, preliminary):*[93] This is case-level data that are collected monthly. The preliminary 2021 data are the most recent data available.
- *ACF–118 (State and Territory Plan, 2022–2024):*[94] This is the application for CCDF funds and provides a description of, and assurances about, the Lead Agency's child care program and all services available to eligible families. Data from the FFY 2022–2024 State and Territory Plans were the most current data available.
- *CCDF Policies Database (2020):*[95] The CCDF Policies Database, managed by the Office of Planning, Research, and

[92] *https://www.acf.hhs.gov/occ/data/gy-2023-ccdf-allocations-based-appropriations.*

[93] Unpublished ACF–801 Preliminary Administrative Data.

[94] *https://www.acf.hhs.gov/occ/report/acf-118-overview-state-territorial-plan-reporting.*

[95] CCDF Policies Database, 2020 data. *https://ccdf.urban.org/.*

Evaluation (OPRE) and the Urban Institute, is a single source of information on the detailed rules for States' and Territories' CCDF child care subsidy programs. Data was from the ''State Variations in CCDF Policies as of October 1, 2020.

Since dollar figures are collected from reports that span different years, we adjust all dollar amounts to account for inflation. For the purposes of this RIA, all dollar figures were converted to 2023 dollars.

TABLE 1—AVERAGE MONTHLY ADJUSTED NUMBER OF FAMILIES AND CHILDREN SERVED

[FY 2021] [96]

Average number of families	Average number of children
797,200	1,313,700

TABLE 2—NUMBER OF CHILD CARE PROVIDERS RECEIVING CCDF FUNDS

[FY 2021] [97]

Licensed or regulated				Legally operating without regulation [98]							Total
				Child's home		Family home		Group home			
Child's home	Family home	Group home	Center	Relative	Non-Relative	Relative	Non-Relative	Relative	Non-Relative	Center	
114	44,510	20,289	70,204	11,213	4,266	46,791	12,172	0	0	5,310	214,861

2. Implementation Timeline

Provisions included in the final rule are effective 60 days from the date of publication of the final rule. Compliance with provisions in the final rule would be determined through ACF review and approval of CCDF Plans, including Plan amendments, as well as through other federal monitoring, including on-site monitoring visits as necessary.

While this rule does not have specific implementation dates for individual provisions, we acknowledge that it may take Lead Agencies some time to implement the policies included in this final rule particularly since some of these are at the Lead Agency's option and some of the changes in this final rule may require State, Territory, or Tribal legislative or regulatory action in order to implement. During the public comment period, we received a number of comments about the one year implementation period. Commenters pointed out that implementing these changes would require a significant amount of time, especially when factoring in the changes that require legislative approval. Therefore, in response to comments received during the public comment period, we are allowing Lead Agencies the option to request transitional and legislative waivers for 2 years, which will allow up to two years of implementation instead of one.

This revised cost estimate assumes a two year ramp up period. Our projections assume a third of the full costs/transfers/benefits in year 1, two-thirds in year 2, with full implementation in year 3 and the following years. The exception to this is the systems-related cost estimate. Since this represents the upfront cost of changing IT systems, those will be split evenly across the implementation period and will not have an ongoing cost in year 3 and beyond. The costs, transfers, and benefits in this estimate are phased-in as follows:

- Year 1: One third of the full costs/transfers/benefits estimate, with half of the cost of the systems-related estimate.
- Year 2: Two-thirds of the full costs/transfers/benefits estimate, with half of the cost of the systems-related estimate.
- Years 3 through 5: Full costs/transfer/benefits estimate, with no systems-related cost since that would no longer apply.

The RIA examines the potential costs, transfers and benefits over a 5 year window. During the public comment period, it was clear that some commenters were confusing the 5 year window with the implementation timeline. To clarify, the 5 year examination window is not the implementation timeline. The purpose of the 5 year window is to examine the impact of the regulation over time. Since the projected costs, transfers, and benefits stabilize by the beginning of year 3, we chose a 5 year window for our projections.

3. Need for Regulatory Action

Congress last authorized the Act in November 2014. In September 2016, HHS published a final regulation, clarifying the new provisions of the Act and building on the priorities that Congress included in reauthorization. In the years since then, HHS has carefully explored the successes and challenges in the Act's implementation, learned from the experiences of Lead Agencies, providers, families, and early educators, and assessed the impact and implications of the COVID–19 public health emergency.

The revisions in this final rule are designed to build on the work of the past, creating a program that effectively supports child development and family economic well-being.

These policies will help families access high-quality child care and mitigate myriad negative consequences of inadequate access to care. Specifically, the revisions:

- Lower child care costs for families,
- Improve parent choice and strengthen child care payment practices, and
- Streamline the process to access child care subsidies.

CCDF plays a vital role in helping families with low incomes afford child care and go to work, but some current regulations do not adequately support families or further CCDF's purpose and goals. This regulatory action provides much needed direction to improve access to affordable child care by lowering parents' costs and increasing parents' child care options. Further, this regulatory action provides additional clarity around what is and what is not allowed.

B. Analysis of Transfers and Costs

OMB Circular A–4 notes the importance of distinguishing between costs to society as a whole and transfers of value between entities in society. While some of these policies may represent budget impacts to CCDF Lead

[96] Unpublished ACF–801 Preliminary Administrative Data.

[97] Ibid.

[98] For ACF–801 reporting purposes, ''legally operating without regulation'' means a legally operating, unregulated child care provider that, if not participating in the CCDF program, would not be subject to any state or local child care regulations. *https://www.acf.hhs.gov/sites/default/files/documents/occ/ACF-801_Form_and_Instructions_for_federal_fiscal_years_FY2023_and_later.pdf.*

Agencies, from a society-wide perspective, they mostly redistribute costs from one portion of the population to another.

Most of the impacts from these provisions are categorized as transfers. These transfers between entities are discussed in more detail later in this regulatory analysis. The exceptions are:

- Administrative costs associated with grants and contracts;
- IT systems-related costs associated with prospective payment, enrollment-based payment, and grants and contracts; and
- Benefits associated with encouraging an online component to the initial eligibility application process.

During the public comment period, we requested comment about potential systems needs to get a better understanding of the potential need in this area. We received comments about the cost to updating IT systems in order to comply with the requirements in the final rule and received some examples from Lead Agencies about the scope of the changes that would need to be made. The systems estimate was not included in the version of RIA in the NPRM, since the public comment period sought additional information on this matter. Based on the information we received, we are adding this systems cost to this version of the RIA. The discussion of this estimate is included in Systems (Cost) section below.

The RIA examines the impact of both required and recommended policies, which our calculations estimate the annualized impact to be $206.6 million in transfers, $13.1 million in costs, and $15.3 million in benefits. However, it is important to distinguish between the policies that Lead Agencies are required to implement and the policy options which Lead Agencies are allowed to choose whether or not to adopt. To make this distinction as clear as possible, we are organizing our analysis by required and optional policies in the final rule. Based on the calculations in this RIA, we estimate the quantified impact of the required policies in the final rule to be an annualized amount of $57.2 million in transfers and $9.0 million in costs. We estimate the quantified impact of the optional policies in the final rule to be an annualized amount of $149.4 million in transfers, $4.1 million in costs, and $15.3 million in benefits.

1. Transfers and Costs To Implement Requirements in the Final Rule

In this RIA, we examine all the components of the final rule that project to have an economic impact. Of those that are required, we have identified Additional Child Eligibility, Enrollment-based Payment, and the Permissible Co-payments as transfers, while Grants and Contracts and Systems-related costs are designated as costs. When we isolate just those policies that are required in the final rule, we project an annualized total of $57.2 million in transfers and an annualized total of $7.9 million in costs.

Additional Child Eligibility (Transfer): This policy clarifies how Lead Agencies must comply with current regulations by offering at least a full 12 months of eligibility to all children receiving CCDF subsidies, even if they are additional children in a family already participating in CCDF. Currently some Lead Agencies are out of compliance with this requirement by limiting the eligibility period for an additional child until the end of the existing child's eligibility period, at which point all children in the family would be re-determined. This clarification benefits children currently participating in CCDF because it increases the length of time they would receive child care subsidies, but for this estimate, is considered a transfer because those funds are not being used to enroll new children into the CCDF program. The estimate for this is based on the following assumptions:

- Number of Additional Children: We do not currently have data on the birth rate of new children among CCDF families, however, according to the CDC, the fertility rate is 56.3 births per 1,000 women aged 15–22, or 5.63 percent.[99] For the sake of this analysis, we are assuming that 5 percent of the current CCDF population would have a new child within the year. We then applied this to the number of families served (ACF–801 data) to estimate the number of new children per year.
- Average Number of Additional Months of Care: For this estimate, we are assuming that the new children would receive an average of 6 additional months of care (or half of the required minimum 12-month eligibility) due to this policy. Since the minimum would be zero months and the maximum would be twelve months, absent specific data in this area, taking the middle between the maximum and the minimum amount of possible assistance was the most reasonable estimate and one that would minimize a misestimate.
- Number of Lead Agencies Currently Out of Compliance: We calculated the percentage of Lead Agencies that would need to change their policies to comply with this new policy, examining the range of transfer amounts if 5 percent and 45 percent of Lead Agencies needed to come into compliance. However, based on policy questions received since the 2016 final rule, for this estimate we calculate that a quarter of Lead Agencies will have to update their policies, so we are taking 25 percent of the total estimate.

Using the above assumptions and applying the average weighted subsidy amount (ACF–801 data), we came to an annualized transfer amount of $31.4 million.

Enrollment-based Payment (Transfer): This policy requires Lead Agencies to pay providers based on enrollment instead of attendance. During the comment period, we received comments in support of this policy including one that cited a survey that showed 80 percent of child care center directors, administrators and family child care owners, and operators who responded to the survey would be more likely to serve CCDF families if the Lead Agency paid based on enrollment instead of attendance. To estimate the financial impact of this policy, we used data from the CCDF Policy Database and the CCDF State and Territory Plans to determine (1) which Lead Agencies would need to change their policy, (2) how many absence days those Lead Agencies are currently allowing, and (3) how many additional days of care they would have to pay for under this new policy.

To begin, we had to identify an average absence rate for children in child care. According to a 2015 study of Washington DC's Head Start program,[100] students were absent for eight percent of school days on average. This works out to 1.8 days per month (weekdays only). However, seven percent of children missed 20 percent or more of enrolled days (equivalent to 4.4 or more weekdays per month). In another study among a nationally representative sample of Head Start children, children were on average absent 5.5 percent of days (or 1.2 days per month).[101] However, 12 percent of children were chronically absent, that is, absent for more than ten percent of days (or more than 2.1 days per month). And in a study of kindergarten attendance in one county in a mid-Atlantic state, researchers found that on average, kindergartners missed 9.9 days of school

[99] *https://www.cdc.gov/nchs/fastats/births.htm.*

[100] *https://www.urban.org/sites/default/files/publication/39156/2000082-absenteeism-in-dc-public-schools-early-education-program_0.pdf.*

[101] Ansari, A., and Purtell, K.M. (2018). Absenteeism in Head Start and Children's Academic Learning. Child Development, 89(4): 1088–1098.

(out of the entire school year); that works out to about 1 day per month.[102]

During the public comment process, a commenter referenced an American Academy of Pediatrics study [103] on child illness, saying that the data in this study suggests that the RIA may have been underestimating the rate of absences. However, upon closer examination of the data in that study, it showed that children are sick an average of 14 times over the first 3 years of life, for a median of 94 days over those 3 years. This works out to 31 days per year or 2.6 days per month. When we adjust to account for weekdays vs. weekends, this comes to an average estimate of 1.8 sick weekdays per month, which is consistent with the Head Start estimates referenced above.

Taking the literature into consideration, this estimate assumes that a small number (12 percent) of children would be absent 5 days a month; the remaining children would be absent only 2 days a month. We then calculated how many additional days per month each State would have to pay for when they adopt this new policy. We then applied that number of additional days to the average daily subsidy rate (based on ACF–801 data). This gave us an annualized total of $13.2 million.

Permissible Co-payments (Transfer): This policy determines co-payments above 7 percent of a family's income to be an impermissible barrier to child care access and prohibits them. We categorize this policy as a transfer because it transfers the cost from families who would otherwise pay high out of pocket costs or forgo care to Lead Agencies.

To calculate this, we took the CCDF State and Territory Plan data on family co-payments, where Lead Agencies report their lowest and highest co-pay amounts. Lead Agencies report the family income levels associated with those co-payment amounts, so we then calculated what the 7 percent threshold would be and how many of the reported co-payments were above that threshold. There were 22 Lead Agencies that reported co-payment levels above 7 percent of the family's income. This impacts over sixty thousand CCDF families. Since CCDF State and Territory Plan data includes the exact amount of the co-payment, we were able to calculate precisely how much of each co-payment was above the 7 percent threshold. Using CCDF data on the number of families, we estimated the cost burden that would be transferred from families to Lead Agencies.

Since the highest co-pay amounts would only apply to CCDF families at the highest income levels, we used ACF–801 data which shows that 19 percent of families are in the highest income category (above 150 percent of federal poverty line (FPL)).[104] When we apply the current amount of co-pay over 7 percent to these families, we get an annualized transfer amount of $12.6 million.

This is a likely overestimate, because while families with incomes above 150 percent of FPL are the highest income category in our available data, not all of these families would be paying the highest possible co-payment. Families remain federally eligible for CCDF until their incomes reach 85 percent of State Median Income, which is significantly higher than 150 percent of FPL. Additionally, there may be families with incomes below 150 percent of FPL that are currently paying above the 7 percent co-pay threshold, however those families would likely be more than offset by the overestimate included in our methodology.

We received comments in this area from Lead Agencies stating that while they understand the intent of this requirement, it would take some time and changes to their current subsidy IT system. In recognition of comments in this area, we have adjusted the implementation timeline (through transitional waivers) and added a systems-related estimate to this RIA.

Grants and Contracts (Cost): To address lack of supply for certain types of care, the final rule also requires the use of some grants and contracts for direct services. Grants or contracts can be one of the most effective tools to build supply in underserved geographic areas and for underserved populations. They also have the benefit of providing greater financial stability for child care providers.

To estimate the financial impact of implementing the grants and contracts requirement, we estimated the costs for a small, medium, and large States based on FFY 2021 CCDF caseload that include staff to manage grants and contracts (program manager, fiscal office staff, monitoring staff), travel, and administrative costs. For staff costs, we identified staff positions necessary to accomplish the kind of changes that would be necessary to implement these policies and used national BLS wage data [105] to estimate the amount of salary needed for implementation. This included program managers ($92,720 annual salary), fiscal office staff ($49,710 annual salary), and monitoring staff ($59,650 annual salary). As with other cost estimates, we multiplied salary data by two to account for benefits. Since we know that there would be a range of possible costs, we estimated a high-end and low-end estimate for each of these items. For staffing, the estimate included a range of staffing expectations depending on the size of the state. For the high-end estimates, this ranged from approximately one and a half FTEs for small States to over three designated FTEs in the larger States. The low-end estimates assume that States already have infrastructure and personnel for grants and contracts in place so the estimates assign part time duties to handle the new requirement. The costs were based on information gathered by the technical assistance providers that have worked with Lead Agencies on implementing grants and contracts. We applied these estimated costs to those States that are not currently using grants and contracts in a manner that is consistent with the requirement.

We averaged these costs over the 5-year window used for this analysis, taking into account the 2-year phase-in period, and came to an estimated annualized amount of $4.9 million to implement this policy.

Systems (Costs): During the public comment period, we asked for comment in this area and received comments stating that there would be a cost to updating IT systems in order to comply with the requirements in the final rule. This estimate was not included in the RIA of the NPRM, but now that we have received additional information and context, we are adding this to this version. One commenter mentioned the delinking provider payments from child attendance required 6 months to make the required changes to their existing systems. In another example, the commenter mentioned that it took over a year to revise their procurement system in order to implement prospective payments. Another commenter said that the proposed changes would take a minimum of one year to implement and requested a two-year delay in implementation to ensure successful rollout. In response to these and related comments, we have

[102] Ansari, A. (2021). Does the Timing of Kindergarten Absences Matter for Children's Early School Success? School Psychology, 36(3): 131–141.

[103] Morrison, J. (May 23, 2018). Are Young Children Really Sick All The Time? AAP Journals Blog. *https://publications.aap.org/journal-blogs/blog/1994/Are-Young-Children-Really-Sick-All-The-Time*?

[104] *https://www.acf.hhs.gov/sites/default/files/documents/occ/Characteristics_of_Families_and_Children_FY2020.pdf.*

[105] *https://www.bls.gov/oes/current/oes_nat.htm.*

expanded the implementation timeline to two years (through transitional and legislative waivers) and added this systems cost estimate to the RIA.

Lead Agency IT systems needs will vary widely depending on a number of factors, including but not limited to the current state of the IT system and which Lead Agencies have already implemented some of these policies (particularly those Lead Agencies who utilized COVID-related funding to implement policies now covered by the final rule). Rather than trying to estimate the individual systems cost of individual provisions, we used a method based on projected FTEs, including costs associated with contractors and procurement, needed to make these changes. This estimate is meant to cover a number of provisions in the final rule, some of which are required and some that are optional. Since the allocation of expenses to required versus optional policies will depend on each state's needs, for the purposes of this estimate we are evenly distributing the costs, with 50 percent of this systems estimate assigned to required policies and 50 percent of the systems estimate assigned to optional policies.

First, we identified staff positions necessary to accomplish the kind of changes that would be necessary to implement these policies. The staff that we identified from the BLS database [106] were: Project Manager (Computer Systems Design and Related Services) with an annual salary of $113,950, Computer and Information Systems Managers (which includes the duties of a business and systems analyst) with an salary of $173,670, Database Architects at an annual salary of $136,540, and Database Administrators with an annual salary of $102,530. For the purposes of these calculations, we took wage data from the BLS database and multiplied the average salary for each position by two to account for employee benefits.

To develop our range of estimates, we came up with three scenarios: a low, medium, and high estimate to represent three different potential levels of need. For each tier, we estimated the number of employees (and the percentage of their time) necessary to handle a volume of changes. The tiers are as follows:

- Low Need (equivalent to 1.25 FTEs or 2,600 project hours): 1 Project Manager (25 percent), 1 Computer and Information Systems Manager (25 percent), 1 Database Architect (25 percent), and 1 Database Administrator (50 percent). Cost per Lead Agency: $315,000 for the full two-year implementation period.
- Medium Need (equivalent to 2.5 FTEs or 5,200 hours): 1 Project Manager (50 percent), Computer and Information Systems Manager (50 percent), 1 Database Architect (50 percent), and 1 Database Administrator (100 percent). Cost per Lead Agency: $630,000 for the full two-year implementation period.
- High Need (equivalent to 5 FTEs or 10,400 hours): 1 Project Manager (100 percent), 1 Computer and Information Systems Manager (100 percent), 1 Database Architect (100 percent), and 2 Database Administrators (100 percent). Cost per Lead Agency: $1.3 million for the full two-year implementation period.

Since each State's need will vary depending on the current state of their IT system and the particular policies they are attempting to implement, for the purposes of this RIA, we assume an even distribution of one third of the States at each tier of need. Based on this analysis, we estimated the total systems cost for the implementation window would be $41.0 million. When distributed across the implementation window, that comes to approximately $20.6 million per year for the first two years, half of which would be to implement the required policies in the rule. Since this is the cost of an upfront IT systems change, once those changes are complete, our estimate does not include an ongoing cost in years 3 through 5. The projected cost of this would be $10.3 million per year to implement required policies over the 2 year implementation period. When projected out over the 5 year examination window (which is the timeframe we are using to analyze all other policies in the RIA), the annualized cost is $4.1 million for implementing required policies in the final rule.

TABLE 3—REQUIREMENTS IN THE FINAL RULE, TRANSFERS AND COSTS

[$ in millions]

	Implementation period (years 1–2)	Ongoing annual average (years 3–5)	Annualized transfer amount (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Transfers ($ in millions)								
Additional Child Eligibility	$19.6	$39.2	$31.4	$31.0	$30.5	$156.9	$146.2	$133.7
Enrollment-based Payment	8.3	16.5	13.2	13.1	12.9	66.2	61.6	56.4
Permissible Co-payments	7.9	15.7	12.6	12.4	12.2	62.9	58.6	53.6
Total	35.7	71.5	57.2	56.5	55.5	285.9	266.4	243.7
Costs ($ in millions)								
Grants and Contracts	3.1	6.1	4.9	4.8	4.8	24.5	22.8	20.9
Systems	10.3	0	4.1	4.3	4.5	20.6	20.3	19.9
Total	13.3	5.1	9.0	9.1	9.3	450	43.1	40.7

2. Transfers and Costs To Implement Optional Policies in the Final Rule

In addition to the above requirements, this rule makes new clarifications that show a range of policy options that Lead Agencies have at their disposal. While these are not required, we do encourage Lead Agencies to adopt these policies when possible and are therefore accounting for the potential impacts in this RIA. For these optional policies, we have identified Presumptive Eligibility, Paying Full Rate, Waiving Co-payments as transfers. For costs in this area, we

[106] BLS Database *https://www.bls.gov/oes/current/oes_nat.htm.*

are allocating the remaining 50 percent of the overall Systems cost estimate to the implementation of optional policies. When we isolate the transfer and cost impact of optional policies in the final rule, we project an annualized total of $149.4 million in transfers and an annualized total of $4.1 million in costs.

Presumptive Eligibility (Transfer): This policy permits, but does not require, CCDF Lead Agencies to allow families to begin receiving child care assistance before all required documentation has been submitted.

Presumptive eligibility primarily constitutes a transfer from families, who would otherwise pay unsubsidized child care costs or forego costs while their application is under review, to Lead Agencies. More specifically, if some families who receive presumptive assistance are found to be ineligible once full documentation is received, that would be considered a transfer of resources between certain populations of families.

Based on other programs that have used presumptive eligibility, such as Medicaid and the Children's Health Insurance Program (CHIP), we do not anticipate this will be a high percentage of families, particularly since Lead Agencies using this policy can put in place documentation requirements that would limit the number of families that are inaccurately determined to be eligible. However, to the extent these cases may occur, they would represent a transfer of funds from CCDF-eligible children to CCDF-ineligible children. The cost in this estimate relies on the following assumptions:

- Estimated Number of Children: Not all families would need to use presumptive eligibility. Given that this is a new policy and there is not data to support some of the variables in this estimate, for the purposes of this calculation, we calculated that of the children applying for CCDF, only a fraction will actually utilize presumptive eligibility. This estimate assumes that every month, a number equal to 5 percent of the current CCDF population would use the presumptive eligibility option.
- Anticipated Lead Agency Take-up: This policy is not required, and we do not anticipate that all Lead Agencies will adopt this policy option. For the purposes of the RIA, we used reports showing 21 States currently use presumptive eligibility for Medicaid and CHIP [107] (as of August 31, 2021) as a proxy for those Lead Agencies that would also adopt it for CCDF. We are not assuming that these exact same States will also use presumptive eligibility, but we believe that it is helpful in estimating the percentage of families for whom this policy would apply.
- Percentage of Children Eventually Determined Ineligible: An Urban Institute study on presumptive eligibility found a small number of families receiving presumptive eligibility were eventually found to be ineligible.[108] The study does not cite a specific figure, but a low estimate seems reasonable because CCDF Lead Agencies can put safeguards in place (*e.g.,* requiring certain documentation before allowing presumptive eligibility) that would limit the number of families that are eventually determined ineligible. The estimate currently assumes that 5 percent of presumptive eligibility families—a small subset of families receiving CCDF—would eventually be found ineligible. We examined a range of possibilities for families that may eventually be found ineligible, with estimates as high as 10 percent and as low as 2.5 percent of presumptive eligibility families. However, lacking any specific data in this area, we believe that 5 percent is a reasonable estimate.
- Amount of Time that CCDF-Ineligible Children will Receive Care: The range of possible months of assistance that a family could receive through this policy is between zero and 3 months. Since this is a new policy, absent relevant data, we are estimating that families will receive half of the 3 months allowed by the policy (6 weeks) before they are found to be ineligible.

Applying the average subsidy amount of approximately $8,400 per year [109] (which has been adjusted for inflation to 2023 dollars) to the above assumptions, we calculated an annualized transfer of $16.4 million for this policy.

Paying Established Payment Rate (Transfer): This policy codifies existing policies that Lead Agencies may pay child care providers the full published subsidy rate even if the provider's private pay rate is lower to help cover the cost of providing care. We are categorizing this as a transfer because it would transfer the cost burden from the providers (who are currently providing equivalent services at relatively low rates) to the CCDF Lead Agency.

There are several limitations in the data that are discussed below. Given these limitations we initially used two different methods to assess the cost burden in the NPRM, which were used to validate each other. While the two approaches used very distinct methodologies, they arrived at similar estimates. However, data limitations preclude us from using both methodologies for the final rule. In the final rule, we updated our estimates throughout the RIA to reflect the most recent FY21 data, but do not have FY21 microlevel data. However, since the two analyses validated each other for the FY20 data set in the NPRM, we feel confident using our updated FY21 projection from Approach 1, described below.

- Base Subsidy Rates vs. Actual Payments (Approach 1): For this approach, we examined the following factors:
  - Base Subsidy Rates versus Actual Subsidy Payments: We examined the difference between the (1) Base Subsidy Rate as reported in the CCDF State and Territory Plans [110] and (2) the Average Subsidy Rate (the government portion of actual payments, excluding parent co-payment) as reported in the ACF–801 data.[111] To the extent that the average subsidy payment is lower than the reported base subsidy rate, we are attributing a portion of this difference to current policy limitations (*i.e.,* Lead Agencies currently paying providers no more than their private pay rate). While there may be a variety of factors explaining why the average subsidy payment is lower than the base payment rate (including co-payments), such as variation in attendance, for the purposes of this estimate we are attributing 25 percent of this difference to current policy limitations.

Note: The average subsidy payment figures in this calculation also include payments to providers that are above the reported base rate due to tiered reimbursement rates for higher quality and other characteristics. We did not have the data necessary to remove those payments. However, we still wanted to adjust our figures to account for these payments. Approach 2 (described below) used microdata to remove payments above the base rate from the sample and found that the difference between base rate and actual payments was twice as large as the amount when those payments remained in the sample. Using this information, we applied a factor of two to increase our estimate, simulating the removal of such payments (those paying above the base rate) from our sample.

[107] *https://www.medicaid.gov/medicaid/enrollment-strategies/presumptive-eligibility/index.html.*

[108] Adams, G. (2008). Designing Subsidy Systems to Meet the Needs of Families: An Overview of Policy Research Findings. Washington, DC: Urban Institute. *https://www.urban.org/sites/default/files/publication/31461/411611-Designing-Subsidy-Systems-to-Meet-the-Needs-of-Families.pdf.*

[109] Unpublished Preliminary FY 2021 CCDF Administrative Data.

[110] *https://www.acf.hhs.gov/occ/report/acf-118-overview-state/territorial-plan-reporting.*

[111] Unpublished Preliminary FY 2021 CCDF Administrative Data.

○ Setting: We looked at two sets of data: one for Family Child Care Home providers (including Group Homes) and another for Child Care Centers. We combined the estimates from each of these to come to the final total.

○ Anticipated Take-up: Since this is not required and is an option already available to Lead Agencies, we examined a range of implementation rates. The annual amount for this estimate could be as high as $394 million if 25 percent of States adopted this policy and as low as $79 million if only 5 percent of States chose to implement. However, actual take-up will likely depend on availability of funding and given that this policy option is already available to Lead Agencies, we believe that a take-up rate in the middle to lower end of our estimated range would be the most accurate. For the purposes of this estimate, we assume that 10 percent of Lead Agencies will take up this policy.

Our calculation for approach #1 gave us an annual estimated transfer of $157.4 million when fully implemented and using the most recent FY 21 CCDF Administrative Data.

Once we take into account the 2-year implementation period, we have a final annualized transfer estimate of $126.0 million per year to implement this provision.

Waiving Co-payments for Additional Populations (Transfer): This policy allows Lead Agencies to choose to more easily waive co-payments for families with incomes up to 150 percent of FPL, families with children in foster and kinship care, and for eligible families with children with disabilities. Lead Agencies currently are automatically allowed this flexibility for families up to 100 percent of FPL and for vulnerable populations (and may propose to waive co-payments beyond 100 percent of FPL so long as they have a sliding scale). One Lead Agency submitted a comment highlighting an internal survey of participating families that showed the positive impact of waiving co-payments, which allowed families to continue to work or go back to work, explore educational opportunities, and achieve better financial security. To calculate the financial impact of this policy, we used state-by-state data (ACF–801) to determine how many CCDF families currently have a co-payment. This eliminates families from the estimate that already have their co-pays waived. We then look at the low and high co-pay amounts (as reported in the CCDF State and Territory Plans) and apply it to the remaining CCDF families based on the income distribution of CCDF families (ACF–801 data). We did not conduct separate estimates for children in foster and kinship care and children with disabilities because we have limited data on current co-payments for these populations.

For the purposes of this estimate, we applied the low co-payment level to families with incomes between 0–100 percent of FPL and the high co-payment levels to families with incomes between 100–150 percent of FPL. We note that this is likely an overestimate because families with incomes in the 100–150 percent of FPL range are not the highest earning families in the CCDF program (which allows income up to the higher threshold of 85 percent of State Median Income, though this varies by state).

We then calculated the number of co-payments that would be waived if a subset of Lead Agencies implemented this policy. We calculated the transfer amount for a range of possibilities, including scenarios with a low estimate of 5 percent of Lead Agencies implementing the policy and a high estimate of 45 percent of Lead Agencies. However, based on anecdotal evidence and policy questions that have been submitted to OCC by Lead Agencies, we chose to use a midpoint of 25 percent implementation for the RIA.

Then, because Lead Agencies would have the option for how widely they chose to waive co-payments and how they apply these waivers to families within the State or territory, we estimated this at different tiers, showing the cost if Lead Agencies waived co-pays for 25 percent, 50 percent, 75 percent, and 100 percent of families with incomes under 150 percent of FPL. For the purposes of this cost estimate, we are assuming that the States adopting this policy will waive co-pays for 75 percent of families with incomes under 150 percent of FPL. This gave us an annualized transfer amount of $7.1 million to implement this policy.

Systems (Costs): We explain our methodology for the systems estimate above. When distributed across the two year implementation window, we estimate approximately $20.6 million per year for the first two years. Since this is the cost of an upfront IT systems change, once those changes are complete, our estimate does not include an ongoing cost in years 3 through 5. The projected cost of this would be $10.3 million per year to implement the optional policies over the 2 year implementation period. When projected out over the 5 year examination window (which is the timeframe we are using to analyze all other policies in the RIA), the annualized cost is $4.1 million for implementing optional policies in the final rule.

TABLE 4—OPTIONAL POLICIES IN THE FINAL RULE, TRANSFERS AND COSTS

[$ in millions]

	Implementation period (years 1–2)	Ongoing annual average (years 3–5)	Annualized transfer amount (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Transfers ($ in millions)								
Presumptive Eligibility	$10.2	$20.4	$16.4	$16.2	$15.9	$81.8	$76.2	$69.7
Paying Established Payment Rate	78.7	157.4	126.0	124.4	122.3	629.8	586.8	536.7
Waiving Co-payments for Additional Populations	4.5	8.9	7.1	7.1	6.9	35.7	33.3	30.4
Total	93.4	186.8	149.5	147.6	145.2	747.2	696.2	636.8
Costs ($ in millions)								
Systems	10.3	0	4.1	4.3	4.5	20.6	20.3	19.9
Total	10.3	0	4.1	4.3	4.5	20.6	20.3	19.9

C. Analysis of Benefits

The changes made by this regulation have the following primary benefits:

- Lowering parents' cost of care;
- Expanding parents' options for child care;
- Strengthening payment practices to child care providers;
- Making it possible for more providers to accept families with subsidy; and
- Easing family enrollment into the subsidy program.

Implementation of this rule will have direct impacts on two primary beneficiaries: working families with low incomes and child care providers serving children receiving CCDF subsidy.

In examining the benefits of this rule, there are both benefits that we were able to quantify (*e.g.,* applying online) and other benefits that, while we were not able to quantify for this analysis, have very clear positive impacts on children funded by CCDF, their families who need assistance to work, child care providers that care for and educate these children, and society at large. Where we are unable to quantify impacts of policies, we offer qualitative analysis on the benefit that the regulation will have on children, families, child care providers, and the public.

Lowering the cost of child care: For many families, child care is prohibitively expensive. In 34 States and the District of Columbia, enrolling an infant in a child care center costs more than in-state college tuition.[112] More than 1 in 4 families, across income levels, commits at least 10 percent of their income to child care. Households with incomes just above the federal poverty level are most likely to commit more than 20 percent of their income to child care.[113] In response, families often seek out less expensive care—which may have less rigorous quality or safety standards—or parents, particularly women, exit the workforce entirely.[114]

Among other purposes, Congress designated the Act to ''promote parental choice,'' to ''support parents trying to achieve independence from public assistance,'' and to ''increase the number and percentage of low-income children in high-quality child care settings'' (sec. 658A(b), 42 U.S.C. 9857(b)). High co-payments undermine these statutory purposes. Despite receiving child care subsidies, child care affordability remains a concern for families with low incomes and prevents families from feeling empowered to make child care decisions that best meet their needs. In 2019, 76 percent of surveyed households that searched for care for their young children had difficulty finding care that met their needs. Among this group, when respondents were asked the main reason for difficulty, the most common barrier was cost, followed by a lack of open slots.[115] Receiving child care subsidies alone is not enough for parents to feel secure in making ends meet. Multiple studies found that parents receiving subsidy continue to experience substantial financial burden in meeting their portion of child care costs.[116] Other research shows that higher out-of-pocket child care expenses (which may include co-payments) reduce families' child care use and parental (particularly maternal) employment.[117] Given that co-payments have been shown to limit parents' access to child care among CCDF-participating families in terms of both parents' ability to afford particular child care settings as compared to higher-income families (even among families eligible to receive CCDF), ACF is changing § 98.45 to reduce parent co-payments.

To make child care more affordable to families participating in CCDF, we make family co-payments above 7 percent of family income impermissible because they are a barrier to accessing care. The revisions also make it easier for Lead Agencies to waive co-payments for additional families.

Increase parent choice and strengthen and stabilize the child care sector: The revisions in this regulation require and encourage generally accepted payment rates and practices for providers that better account for the cost of care, and when implemented, would increase parent choice in care, support financial stability for child care providers that currently accept CCDF subsidies, and encourage new providers to participate in the subsidy system.

Correcting detrimental payment practices is critical for ensuring all families have access to high-quality child care. This regulation requires Lead Agencies to pay providers prospectively based on enrollment. To address lack of supply for certain types of care for populations prioritized in the Act, the rule also requires the use of some grants and contracts for direct services. Additionally, the regulation clarifies that Lead Agencies may pay providers the full established state payment rate, even if the rate is above the private pay price to adjust for the cost of care. Payments based on enrollment [118] and through grants and contracts [119] helped providers remain financially stable during the peak of the COVID–19 public health emergency. The revisions to payment practices and higher subsidy rates are also linked to higher-quality care and increases in the supply of child care.[120] [121] [122]

Streamline the process to access child care subsidies: The revisions in this regulation encourage Lead Agencies to reduce the burden on families to access child care subsidies. Current subsidy eligibility determination and enrollment processes create administrative burden that unnecessarily complicates how families access subsidies [123] and how fast.

In the context of child care subsidies, administrative burden disrupts initial

[112] Child Care Aware of America. (2022). Price of Care: 2021 child care affordability analysis. Arlington, VA: Child Care Aware of America *https://www.childcareaware.org/catalyzing-growth-using-data-to-change-child-care/#ChildCare Affordability.*

[113] National Survey of Early Care and Education Project Team (2022): Erin Hardy, Ji Eun Park. 2019 NSECE Snapshot: Child Care Cost Burden in U.S. Households with Children Under Age 5. OPRE Report No. 2022–05, Washington DC: Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS). *https://www.acf.hhs.gov/opre/report/2019-nsece-snapshot-child-care-cost-burden-us-households-children-under-age-5.*

[114] Hill, Z., Bali, D., Gebhart, T., Schaefer, C., & Halle, T. (2021) Parents' reasons for searching for care and results of search: An analysis using the Access Framework. OPRE Report #2021–39. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. *https://www.acf.hhs.gov/opre/report/parents-reasons-searching-early-care-and-education-and-results-search-analysis-using.*

[115] National Center for Education Statistics. 2019. National Household Education Surveys Program 2019. *https://nces.ed.gov/nhes/young_children.asp.*

[116] Scott, E.K., Leymon, A.S., & Abelson M. (2011). Assessing the Impact of Oregon's 2007 Changes to Child-Care Subsidy Policy. Eugene, Oregon: University of Oregon; Grobe, Deana & Weber, Roberta & Davis, Elizabeth & Scott, Ellen. (2012). Struggling to Pay the Bills: Using Mixed-Methods to Understand Families' Financial Stress and Child Care Costs. 10.1108/S1530–3535(2012)0000006007.

[117] Morrissey, Taryn W. ''Child care and parent labor force participation: a review of the research literature.'' *Review of Economics of the Household* 15.1 (2017): 1–24. *https://link.springer.com/content/pdf/10.1007/s11150-016-9331-3.pdf.*

[118] Lieberman, A. et al. (2021). Make Child Care More Stable: Pay by Enrollment. New America.

[119] Workman, S. (2020). Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care. Center for American Progress.

[120] Lieberman, A. et al. (2021). Make Child Care More Stable: Pay by Enrollment. New America.

[121] Workman, S. (2020). Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care. Center for American Progress.

[122] Greenberg, E. et all (2018). Are Higher Subsidy Payment Rates and Provider-Friendly Payment Policies Associated with Child Care Quality? Urban Institute.

[123] Adams, G. and Compton, J. (2011). Client-Friendly Strategies: What Can CCDF Learn from Research on Other Systems? Urban Institute.

and continued access to care, both of which are detrimental to children's development and families' employment security.[124] We see administrative burden play out, for example, when Lead Agencies assess family eligibility. A substantial portion of families who lose benefits still meet the criteria for participation. Within a few months, those same families can demonstrate eligibility and return for subsequent enrollment.[125] Workers with unexpected hours or limited control over their schedule are significantly more likely to lose child care subsidies.[126] Further, families who electively exit the program are three times more likely to do so during their redetermination month than any other time.[127] These studies suggest that these families missed out on benefits because of administrative challenges rather than issues with eligibility.

We were able to quantify the impact of the policy to encourage CCDF Lead Agencies to implement policies that ease the burden of applying for child care assistance, including allowing online methods of submitting initial CCDF applications. This would be a benefit to families who would not have to take time off from work, job search, or other activities to apply for child care assistance. To estimate this benefit, we used the following factors:

- Number of Families that would Benefit: As a baseline for the number of families that would be impacted by this policy, we assumed that the number of families applying every month is equal to 5 percent of the current CCDF monthly caseload, which means that over the course of a year, families equal to 60 percent of the current caseload are applying for child care. However, many more people apply for CCDF than receive assistance, so we doubled this number, assuming that for every family who applies to CCDF and receives assistance, there may be another family who applies and does not receive assistance.
- *Estimated Time Saved:* We are estimating that the online option would save families from missing 4 hours of time or half of a full day's work. This accounts for the time to actually process the application in person and time to travel to and from the appointment.
- *Wages:* We adopt an hourly value of time based on after-tax wages to quantify the opportunity cost of changes in time use for unpaid activities. This approach matches the default assumptions for valuing changes in time use for individuals undertaking administrative and other tasks on their own time, which are outlined in an ASPE report on ''Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices.'' [128] We start with a measurement of the usual weekly earnings of wage and salary workers of $1,059.[129] We divide this weekly rate by 40 hours to calculate an hourly pre-tax wage rate of $26.48. We adjust this hourly rate downwards by an estimate of the effective tax rate for median income households of about 17 percent, resulting in a post-tax hourly wage rate of $21.97. We adopt this as our estimate of the hourly value of time when calculating benefits associated with this impact. If we were to use a fully-loaded wage of $37.56/hour, the cost of full implementation would be over $30 million. However, for the accounting statement, we use the post-tax hourly wage of $21.97.

Using the above figures and applying them to the CCDF caseload, we estimate an annualized benefit of $15.3 million related to this policy.

TABLE 5—OPTIONAL POLICIES, BENEFITS

[$ in millions]

	Implementation period (years 1–2)	Ongoing annual average (years 3–5)	Annualized benefit amount (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Streamlining the Process to Access Child Care Subsidies	$9.6	$19.2	$15.3	$15.1	$14.9	$76.6	$71.4	$65.3
Total	9.6	19.2	15.3	15.1	14.9	76.6	71.4	65.3

Research clearly points to the benefits of access to high-quality child care, including immediate benefits for improved parenting earnings and employment.[130] In turn, improved employment and economic stability at home, combined with high-quality experiences and nurturing relationships in early childhood settings, reduces the impact of poverty on children's health and development. Evidence further shows the positive effects of high-quality child care are especially pronounced for families with low incomes and families experiencing adversity. Therefore, as children and families go through periods of challenge or transition, timely access to reliable and affordable care is especially critical. This includes when parents start a new job or training program, experience changes in earnings or work hours, move to a new area, or lose access to an existing care arrangement, which some

[124] Adams, G., & Rohacek, M. (2010). Child care instability: Definitions, context, and policy implications. Urban Institute.

[125] Grobe, D., Weber, R.B., & Davis, E.E. (2008). Why do they leave? Child care subsidy use in Oregon. Journal of Family and Economic Issues.

[126] Henly, J. et al. (2015). Determinants of Subsidy Stability and Child Care Continuity. Urban Institute.

[127] Grobe, D., Weber, R. B., & Davis, E.E. (2008). Why do they leave? Child care subsidy use in Oregon. Journal of Family and Economic Issues.

[128] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. 2017. ''Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices.'' *https://aspe.hhs.gov/reports/valuing-time-us-department-health-human-services-regulatory-impact-analyses-conceptual-frameworkhttps://aspe.hhs.gov/reports/valuing-time-us-department-health-human-services-regulatory-impact-analyses-conceptual-framework.*

[129] U.S. Bureau of Labor Statistics. Employed full time: Median usual weekly nominal earnings (second quartile): Wage and salary workers: 16 years and over [LEU0252881500A], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LEU0252881500A.https://fred.stlouisfed.org/series/LEU0252881500A.* Annual Estimate, 2022.

[130] Morrissey, T.W. 2017. Child care and parent labor force participation: a review of the research literature. Review of Economics of the Household 15, 1–24. *https://doi.org/10.1007/s11150-016-9331-3;* Blau, D., Tekin, E. (2007). The determinants and consequences of child care subsidies for single mothers in the USA. Journal of Population Economics 20, 719–741. *https://doi.org/10.1007/s00148-005-0022-2.;* Shonkoff, J.P., & Phillips, D.A. (Eds.). (2000). *From neurons to neighborhoods: The science of early childhood development.* National Academy Press.; Herbst, C. (2017). Universal Child Care, Maternal Employment, and Children's Long-Run Outcomes: Evidence from the US Lanham Act of 1940. Journal of Labor Economics, 35 (2). *https://doi.org/10.1086/689478.*

families report are the circumstances that bring them to first apply for CCDF subsidies.[131] These are also circumstances under which CCDF has the potential to substantially impact family earnings, economic stability, and well-being.

Improving access to assistance also yields benefits in terms of child development outcomes for children who participate in CCDF as a result of this regulation. The provisions in this rule improve access and some children who might not have received subsidized care under the current rule (*e.g.,* those whose parents could not pay the co-pay) would receive subsidized care under these regulations. For these children, they are likely to receive higher quality care than they otherwise would have. Research has demonstrated clear linkages between high quality child care and positive child outcomes, including school readiness, social-emotional outcomes, educational attainment, employment, and earnings.[132]

D. Distributional Effects

We considered, as part of our regulatory impact analysis, whether changes would disproportionately benefit or harm a particular subpopulation. As discussed above, benefits accrue both directly and indirectly to society. Some of the policies included in this regulation are at the Lead Agency option, so the impacts will be dependent upon (1) if the Lead Agency chooses to adopt the policy, and (2) how they choose to implement the policy given the available funding. When examining the potential impacts of these policies, there are several required policies where certain subsets of the population may be impacted differently by the policies. While the policies will limit the amount of family co-payment that CCDF families will have to pay, the child care providers must still be compensated for that amount. That means that the burden of those co-payment costs shift to the CCDF Lead Agency. Given finite funding for CCDF, the increase in payments for which Lead Agencies are now responsible would mean that there are less resources for new CCDF families because families that participate in CCDF receive higher subsidies for a longer period of time and for more children.

Similarly, the requirement to pay providers based on a child's enrollment rather than attendance will stabilize funding for providers, may increase the amount a Lead Agency pays if they were not previously paying for absence days in the same manner parents without child care subsidies by for absence days. This creates a transfer in resources from the child care provider, who previously had to continue running the program without funding on days when the child was absent, to the Lead Agency. This shift in funding could decrease the amount of funding allocated by the Lead Agency for direct services, and therefore, could result in a decrease in the number of children served. Based on our estimated amount of combined required transfers (at full implementation; from enrollment-based payment, permissible co-payments, grants or contracts, and systems investments) and the average subsidy payment amount, we estimate that the transfers for these required policies could lead to a reduction in caseload of approximately 4,570 children per year, or about a third of 1 percent of the FY 2021 caseload, without additional resources.

For the eligibility policies, we are not projecting a direct reduction in caseload. This is because for both the presumptive eligibility policy and the new child eligibility policy, these represents transfers from one child to another. The result is a shift in which child is occupying a CCDF slot, but we do not project that these policies would lead to a decrease in the number of children served.

For those children who potentially would have received subsidies under the previous rule, but do not receive subsidies under this final rule, it is possible that they would receive unregulated care which tends to be lower quality and less stable. However, we expect that, overall, these policies will improve quality and stability of care for children who continue to participate in CCDF.

While we do not anticipate a direct reduction in caseload from the eligibility policies themselves, we do acknowledge that there will be IT systems changes required to implement these policies. In response to comments received, this version of the RIA now includes an estimate of the systems-related costs necessary for compliance with the final rule. These are upfront costs that would be incurred during the implementation period, so these changes could result in a potential reduction in caseload during the first two years. Based on the projected costs, we estimate that updating systems to implement requirements in this rule could lead to a reduction in the caseload of approximately 1,225 per year for the first two years. This caseload reduction would not apply in subsequent years.

The total projected caseload reduction per year for the final rule will increase at an irregular rate because it simultaneously takes into account the upfront cost of the systems-related changes (which only applies during years 1 and 2) and the phased-in impact of other requirements during the implementation period, which gradually increases during years 1 and 2. Using the 2-year implementation window, the potential caseload reduction is represented in Table 6 below. The total projected reduction to the caseload could be 2,750 in Year 1 and 4,570 in year 3. The potential reduction to the caseload of 4,570 would remain the same in year 3 and beyond because the transfers and costs are projected to stabilize once the implementation window has ended.

TABLE 6—POTENTIAL ANNUAL CASELOAD REDUCTION IN THE FINAL RULE

	Year 1	Year 2	Years 3–5
Final Rule Requirements (enrollment-based payment,+permissible co-payments+grants/contracts)	1,525	3,050	4,570

[131] Lee, R., Gallo, K., Delaney, S., Hoffman, A., Panagari, Y., et al. (2022). Applying for child care benefits in the United States: 27 families' experiences. US Digital Response. *https://www.usdigitalresponse.org/projects/applying-for-child-care-benefits-in-the-united-states-27-families-experiences.*

[132] Deming, David. 2009. ''Early Childhood Intervention and Life-Cycle Skill Development: Evidence from Head Start.'' American Economic Journal: Applied Economics, 1 (3): 111–34.; Duncan, G.J., and Magnuson, K. 2013. ''Investing in Preschool Programs.'' Journal of Economic Perspectives, 27 (2): 109–132.; Duncan, G.J., and Magnuson, K. 2013. ''Investing in Preschool Programs.'' Journal of Economic Perspectives, 27 (2): 109–132.; Weiland, C., Yoshikawa, H. 2013. ''Impacts of a Prekindergarten Program on Children's Mathematics, Language, Literacy, Executive Function, and Emotional Skills.'' Child Development, 86(6), 2112–2130.; Heckman, James J., and Tim Kautz. ''Fostering and Measuring Skills Interventions That Improve Character and Cognition.'' In The Myth of Achievement Tests: The GED and the Role of Character in American Life. Edited by James J. Heckman, John Eric Humphries, and Tim Kautz (eds). University of Chicago Press, 2014. Chicago Scholarship Online, 2014. *https://doi.org/10.7208/chicago/9780226100128.003.0009.*

TABLE 6—POTENTIAL ANNUAL CASELOAD REDUCTION IN THE FINAL RULE—Continued

	Year 1	Year 2	Years 3–5
Systems-Related Costs	1,225	1,225	0
Total	2,750	4,275	4,570

Breakeven Analysis: While we acknowledge the costs of updating systems, several commenters stated that we should also acknowledge the potential cost savings of these policies. In particular, commenters noted that streamlining eligibility processes will reduce administrative burden for Lead Agencies and therefore offset the potential costs.

In response to these comments, we conducted a breakeven analysis to determine by how much the Lead Agencies' administrative burden would need to be reduced in order to offset the projected costs of systems-related IT changes. To do this, we used BLS data which lists the average salary for ''Eligibility Interviewers, Government Programs'' as $50,020, which equals 2,080 labor hours. We then multiplied that by two to account for benefits, giving us $100,040 per FTE.

Using a 5-year window, to offset the systems cost of $41.1 million which is incurred over the first two years ($10.3 million per year from required policies and $10.3 million per year from optional policies), Lead Agencies would collectively have to save an average of $8.2 million per year over the 5 years. When distributed across 56 Lead Agencies, this comes out to approximately $150,000 per Lead Agency. This means that if for each year, Lead Agencies were able to reduce their administrative burden by the equivalent 1.5 FTE across the entire state or territory, the cost of updating systems would be offset by the end of the 5-year window.

E. Analysis of Regulatory Alternatives

In developing this rule, we considered a wide range of policy options before settling on these final versions of the policies. Among these alternatives, we considered:

- *Presumptive eligibility:* The policy for presumptive eligibility allows for Lead Agencies to provide families with up to three months of subsidy while the family completes the full eligibility determination process. In designing this policy, we considered a period of two months instead of three months. Using the same assumptions described above, we estimated that two-month presumptive eligibility period would be a transfer of $13.6 million. When compared to the estimated transfer of $20.4 million for a three-month presumptive eligibility period, we determined that the value of the additional month of stability and continuity of care for families outweighed the minimal savings of a two-month presumptive eligibility period.
- *Not regulating:* Another alternative would be to not pursue a regulation and leave the existing policies as they currently stand. For characterization of relevant future conditions in the absence of regulatory changes, please see the ''Baseline'' section of this regulatory impact analysis.

Accounting Statement (Table of Quantified Costs, Including Opportunity Costs, Transfers and Benefits): As required by OMB Circular A–4, we have prepared an accounting statement table showing the classification of the impacts associated with implementation of this final rule. This table includes both required and optional policies.

TABLE 7—QUANTIFIED COSTS, TRANSFERS AND BENEFITS

[$ in millions]

	Implementation period (year 1–2)	Ongoing annual average (years 3–5)	Annualized cost (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Transfers ($ in millions)								
Required Policies:								
Additional Child Eligibility [133]	$19.6	$39.2	$31.4	$31.0	$30.5	$156.9	$146.2	$133.7
Enrollment-based Payment [134]	8.3	16.5	13.2	13.1	12.9	66.2	61.6	56.4
Permissible Co-payments [135]	7.9	15.7	12.6	12.4	12.2	62.9	58.6	53.6
Transfers Subtotal (Required Policies)	*35.7*	*71.5*	*57.2*	*56.5*	*55.5*	*285.9*	*266.4*	*243.7*
Optional Policies:								
Presumptive Eligibility [136]	10.2	20.4	16.4	16.2	15.9	81.8	76.2	69.7
Paying Established Payment Rate [137]	78.7	157.4	126.0	124.4	122.3	629.8	586.8	536.7
Waiving Co-payments for Additional Populations [138]	4.5	8.9	7.1	7.1	6.9	35.7	33.3	30.4
Transfers Subtotal (Optional Policies)	93.4	186.8	149.4	147.6	145.2	747.2	696.2	636.8
Total Transfers	129.1	258.3	206.6	204.1	200.7	1,033.2	962.6	880.5
Costs ($ in millions)								
Required Policies:								
Grants and Contracts	3.1	6.1	4.9	4.8	4.8	24.5	22.8	20.9
Systems	10.3	0	4.1	4.3	4.5	20.6	20.3	19.9
Costs Subtotal (Required Policies)	*13.3*	*6.1*	*9.0*	*9.1*	*9.3*	*45.0*	*43.1*	*40.7*
Optional Policies:								
Systems	10.3	0	4.1	4.3	4.5	20.6	20.3	19.9
Costs Subtotal (Optional Policies)	10.3	0	4.1	4.3	4.5	20.6	20.3	19.9

TABLE 7—QUANTIFIED COSTS, TRANSFERS AND BENEFITS—Continued
[$ in millions]

	Implementation period (year 1–2)	Ongoing annual average (years 3–5)	Annualized cost (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Total Costs	23.6	6.1	13.1	13.4	13.8	65.6	63.3	60.6
Benefits ($ in millions)								
Optional Policies:								
Streamlining the Process to Access Child Care Subsidies	9.6	19.2	15.3	15.1	14.9	76.6	71.4	65.3
Benefits Subtotal (Optional Policies)	*9.6*	*19.2*	*15.3*	*15.1*	*14.9*	*76.6*	*71.4*	*65.3*
Total Benefits	9.6	19.2	15.3	15.1	14.9	76.6	71.4	65.3

F. Impact of Final Rule

Based on the calculations in this RIA, we estimate the quantified impact of the required policies in the final rule to be an annualized amount of $57.2 million in transfers and $9.0 million in costs.

We estimate the quantified impact of the optional policies in the final rule to be an annualized amount of $149.4 million in transfers, $4.1 million in costs, and $15.3 million in benefits.

When we combine the projections for required and optional policies, the annualized totals are $206.6 million in transfers, $13.1 million in costs, and $15.3 million in benefits.

However, the RIA only quantifies the estimated impact of the final rule on the Lead Agencies, parents, and child care providers that interact with the CCDF program, which is only a small portion of the child care market. Whether a family can access and afford child care has far reaching impacts on labor market participation and potential earnings, which then affects businesses' ability to recruit and retain a qualified workforce, affecting overall economic growth.[139]

[133] Transfer from families applying to enter the CCDF program to families that already have children receiving CCDF assistance.

[134] Transfer to some combination of child care providers and CCDF families *from* some combination of other CCDF families and CCDF Lead Agencies.

[135] Transfer to CCDF families *from* some combination of other CCDF families and CCDF Lead Agencies.

[136] Transfer from CCDF-eligible families to non-CCDF eligible families.

[137] Transfer to some combination of child care providers and CCDF families *from* some combination of other CCDF families and CCDF Lead Agencies.

[138] Transfer to CCDF families *from* some combination of other CCDF families and CCDF Lead Agencies.

[139] U.S. Department of the Treasury. (September 2021). The Economics of Child Care Supply in the United States. *https://home.treasury.gov/system/files/136/The-Economics-of-Childcare-Supply-09-14-final.pdf.*

IX. Tribal Consultation Statement

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires agencies to consult with Indian Tribes when regulations 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. The discussion in subpart I in section V of the preamble serves as the Tribal impact statement and contains a detailed description of the consultation and outreach in this final rule.

Jeff Hild, Acting Assistant Secretary of the Administration for Children and Families, approved this document on February 8, 2024.

(Catalog of Federal Domestic Assistance Program Number 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

List of Subjects in 45 CFR Part 98

Child care, Grant programs–social programs.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we amend 45 CFR part 98 as follows:

PART 98—CHILD CARE AND DEVELOPMENT FUND

■ 1. The authority citation for part 98 is revised to read:

Authority: 42 U.S.C. 618, 9858,

■ 2. Amend § 98.2 by:

■ a. Revising the definitions of *Major renovation* and *State;*

■ b. Adding, in alphabetical order, the definitions of *Territory* and *Territory mandatory funds;* and

■ c. Revising the definition of *Tribal mandatory funds.*

The revisions and additions read as follows:

§ 98.2 Definitions.

* * * * *

Major renovation means any renovation that has a cost equal to or exceeding $350,000 in CCDF funds for child care centers and $50,000 in CCDF funds for family child care homes, which amount shall be adjusted annually for inflation and published on the Office of Child Care website. If renovation costs exceed these thresholds and do not include:

(1) Structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or

(2) Extensive alteration of a facility such as to significantly change its function and purpose for direct child care services, even if such renovation does not include any structural change; and improve the health, safety, and/or quality of child care, then it shall not be considered major renovation;

* * * * *

State means any of the States and the District of Columbia, and includes Territories and Tribes unless otherwise specified;

* * * * *

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas Islands;

Territory mandatory funds means the child care funds set aside at section 418(a)(3)(C) of the Social Security Act (42 U.S.C. 618(a)(3)(C)) for payments to the Territories;

Tribal mandatory funds means the child care funds set aside at section 418(a)(3)(B) of the Social Security Act

(42 U.S.C. 618(a)(3)(B)) for payments to Indian Tribes and tribal organizations;
* * * * *

■ 3. Amend § 98.13 by revising paragraph (b)(4) to read as follows:

§ 98.13 Applying for Funds.

* * * * *

(b) * * *

(4) A certification that no principals have been debarred pursuant to 2 CFR 180.300;

* * * * *

■ 4. Amend § 98.15 by revising paragraphs (a)(8) and (b)(12) to read as follows:

§ 98.15 Assurances and certifications.

* * * * *

(a) * * *

(8) To the extent practicable, enrollment and eligibility policies support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences in accordance with § 98.45(m);

* * * * *

(b) * * *

(12) Payment practices of child care providers of services for which assistance is provided under the CCDF reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF assistance, pursuant to § 98.45(m); and

* * * * *

■ 5. Amend § 98.16 by:

■ a. Revising and republishing paragraph (h) and revising paragraph (k);

■ b. Redesignating paragraphs (x) through (ii) as paragraphs (bb) through (ll);

■ c. Adding new paragraphs (x) through (aa); and

■ d. Revising newly redesignated paragraphs (ee) and (ff).

The revisions and additions read as follows:

§ 98.16 Plan provisions.

* * * * *

(h) A description and demonstration of eligibility determination and redetermination processes to promote continuity of care for children and stability for families receiving CCDF services, including:

(1) An eligibility redetermination period of no less than 12 months in accordance with § 98.21(a);

(2) A graduated phase-out for families whose income exceeds the Lead Agency's threshold to initially qualify for CCDF assistance, but does not exceed 85 percent of State median income, pursuant to § 98.21(b);

(3) Processes that take into account irregular fluctuation in earnings, pursuant to § 98.21(c);

(4) Processes to incorporate additional eligible children in the family size in accordance with § 98.21(d);

(5) Procedures and policies for presumptive eligibility in accordance with § 98.21(e), including procedures for tracking the number of presumptively eligible children;

(6) Procedures and policies to ensure that parents are not required to unduly disrupt their education, training, or employment to complete initial eligibility determination or re-determination, pursuant to § 98.21(f);

(7) Processes for using eligibility for other programs to verify eligibility for CCDF in accordance with § 98.21(g);

(8) Limiting any requirements to report changes in circumstances in accordance with § 98.21(h);

(9) Policies that take into account children's development and learning when authorizing child care services pursuant to § 98.21(i); and,

(10) Other policies and practices such as timely eligibility determination and processing of applications;

* * * * *

(k) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost-sharing by the families that receive child care services for which assistance is provided under the CCDF and how co-payments are affordable for families, pursuant to § 98.45(l). This shall include a description of the criteria established by the Lead Agency, if any, for waiving contributions for families;

* * * * *

(x) A description of the supply of child care available regardless of subsidy participation relative to the population of children requiring child care, including care for infants and toddlers, children with disabilities as defined by the Lead Agency, children who receive care during nontraditional hours, and children in underserved geographic areas, including the data sources used to identify shortages in the supply of child care providers.

(y) A description of the Lead Agency's strategies and the actions it will take to address the supply shortages identified in paragraph (x) of this section and improve parent choice specifically for families eligible to participate in CCDF, including:

(1) For families needing care during nontraditional hours, which may include strategies such as higher payment rates, engaging with home-based child care networks, partnering with employers that have employees working nontraditional hours, and grants or contracts for direct services;

(2) For families needing infant and toddler care, which must include grants or contracts for direct services pursuant to § 98.30(b) and described further in paragraph (z) of this section and may include additional strategies such as enhanced payment rates, training and professional development opportunities for the child care workforce, and engaging with staffed family child care networks and/or child care provider membership organizations;

(3) For families needing care for children with disabilities, which must include grants or contracts for direct services pursuant to § 98.30(b) and described further in paragraph (z) of this section and may include additional strategies such as enhanced payment rates, training and professional development opportunities for the child care workforce, and engaging with staffed family child care networks and/or child care provider membership organizations;

(4) For families in underserved geographic areas, which must include grants and contracts for direct services pursuant to § 98.30(b) and described further in paragraph (z) of this section and may include additional strategies such as enhanced payment rates, training and professional development opportunities for the child care workforce, and engaging with staffed family child care networks and/or child care provider membership organizations; and,

(5) A method of tracking progress toward goals to increase supply and support equal access and parental choice.

(z) A description of how the Lead Agency will use grants or contracts for direct services to achieve supply building goals for children in underserved geographic areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and, at Lead Agency option, children who receive care during nontraditional hours. This must include a description of the proportion of the shortages for these groups would be filled by contracted or grant funded slots Lead Agencies must continue to provide CCDF families the option to choose a certificate for the purposes of acquiring care.

(aa) A description of how the Lead Agency will improve the quality of child care services for children in underserved geographic areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and

children who receive care during nontraditional hours.

* * * * *

(ee) A description of generally accepted payment practices applicable to providers of child care services for which assistance is provided under this part, pursuant to § 98.45(m), including practices to ensure timely payment for services, to delink provider payments from children's occasional absences to the extent practicable, cover mandatory fees, and pay based on a full or part-time basis;

(ff) A description of internal controls to ensure integrity and accountability, processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud, and procedures in place to document and verify eligibility, pursuant to § 98.68;

* * * * *

■ 6. Amend § 98.19 by revising the section heading and paragraphs (b)(1) and (f) to read as follows:

§ 98.19 Requests for Temporary Waivers

* * * * *

(b) *Types.* Types of waivers include:

(1) *Transitional and legislative waivers.* Lead Agencies may apply for temporary waivers meeting the requirements described in paragraph (a) of this section that would provide transitional relief from conflicting or duplicative requirements preventing implementation, or an extended period of time in order for a State, territorial or tribal legislature to enact legislation to implement the provisions of this subchapter. Such waivers are:

(i) Limited to a two-year period;

(ii) May not be extended, notwithstanding paragraph (f) of this section;

(iii) Are designed to provide States, Territories and Tribes at most one full legislative session to enact legislation to implement the provisions of the Act or this part, and;

(iv) Are conditional, dependent on progress towards implementation, and may be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

* * * * *

(f) *Renewal.* Where permitted, the Secretary may approve or disapprove a request from a State, Territory or Tribe for renewal of an existing waiver under the Act or this section for a period no longer than one year. A State, Territory or Tribe seeking to renew their waiver approval must inform the Secretary of this intent no later than 30 days prior to the expiration date of the waiver. The State, Territory or Tribe shall re-certify in its extension request the provisions in paragraph (a) of this section, and shall also explain the need for additional time of relief from such sanction(s) or provisions.

* * * * *

■ 7. Amend § 98.21 by:

■ a. Revising paragraph (a)(2)(iii);

■ b. Redesignating paragraphs (d) through (g) as paragraphs (h) through (k); and

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

The revisions and additions read as follows:

§ 98.21 Eligibility determination processes.

(a) * * *

(2) * * *

(iii) If a Lead Agency chooses to initially qualify a family for CCDF assistance based on a parent's status of seeking employment or engaging in job search, the Lead Agency has the option to end assistance after a minimum of three months if the parent has still not found employment, although assistance must continue if the parent becomes employed during the job search period.

* * * * *

(d) The Lead Agency shall establish policies and processes to incorporate additional eligible children in the family size (*e.g.,* siblings or foster siblings), including ensuring a minimum of 12 months of eligibility between eligibility determination and redetermination as described in paragraph (a) of this section for children previously determined eligible and for new children who are determined eligible, without placing undue reporting burden on families.

(e) At a Lead Agency's option, a child may be considered presumptively eligible for up to three months and begin to receive child care subsidy prior to full documentation and eligibility determination:

(1) The Lead Agency may issue presumptive eligibility prior to full documentation of a child's eligibility if the Lead Agency first obtains a less burdensome minimum verification requirement from the family.

(2) If, after full documentation is provided, a child is determined to be ineligible, the Lead Agency shall ensure that a child care provider is paid and shall not recover funds paid or owed to a child care provider for services provided as a result of the presumptive eligibility determination except in cases of fraud or intentional program violation by the provider.

(3) Any CCDF payment made on behalf of a presumptively eligible child prior to the final eligibility determination shall not be considered an error or improper payment under subpart K of this part and will not be subject to disallowance so long as the payment was not for a service period longer than the period of presumptive eligibility.

(4) If a child is determined to be eligible, the period of presumptive eligibility will apply to the minimum of 12 months of eligibility prior to re-determination described in paragraph (a) of this section.

(5) The Secretary may deny the use of federal funds for direct services under presumptive eligibility for Lead Agencies under a corrective action plan for error rate reporting pursuant to § 98.102(c).

(f) The Lead Agency shall establish procedures and policies to ensure parents, especially parents receiving assistance through the Temporary Assistance for Needy Families (TANF) program are not required to unduly disrupt their education, training, or employment in order to complete the eligibility determination or re-determination process, including the use of online applications and other measures, to the extent practicable.

(g) At the Lead Agency's option, enrollment in other benefit programs or documents or verification used for other benefit programs may be used to verify eligibility as appropriate according to § 98.68(c) for CCDF, such as:

(1) Benefit programs with income eligibility requirements aligned with the income eligibility at § 98.20(a)(2)(i) may be used to verify a family's income eligibility; and

(2) Benefit programs with other eligibility requirements aligned with § 98.20(a)(3) may verify:

(i) A family's work or attendance at a job training or educational program;

(ii) A family's status as receiving, or need to receive, protective services; or

(iii) Other information needed for eligibility.

* * * * *

■ 8. Amend § 98.30 by revising paragraph (b) to read as follows:

§ 98.30 Parental choice.

* * * * *

(b)(1) Lead Agencies shall increase parent choice by providing some portion of the delivery of direct services via grants or contracts, including at a minimum for children in underserved geographic areas, infants and toddlers, and children with disabilities.

(2) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care

services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

* * * * *

■ 9. Amend § 98.33 by:
■ a. Redesignating paragraphs (a)(4)(ii) through (a)(4)(iv) as (iii) through (v) and adding a new paragraph (a)(4)(ii);
■ c. Revising (a)(5); and,
■ d. Adding paragraph (a)(8).

The revision and additions read as follows:

§ 98.33 Consumer and provider education.

* * * * *

(a) * * *

(4) * * *

(ii) Areas of compliance and non-compliance;

* * * * *

(5) Aggregate data for each year for eligible providers including:

(i) Number of deaths (for each provider category and licensing status);

(ii) Number of serious injuries (for each provider category and licensing status);

(iii) Instances of substantiated child abuse that occurred in child care settings; and,

(iv) Total number of children in care (for each provider category and licensing status).

* * * * *

(8) The sliding fee scale for parent co-payments pursuant to § 98.45(l), including the co-payment amount a family may expect to pay and policies for waiving co-payments.

* * * * *

■ 10. Amend § 98.43 by revising paragraphs (a)(1)(i), (c)(1) introductory text, (c)(1)(v), (d)(3)(i) introductory text, and (d)(4) to read as follows:

§ 98.43 Criminal background checks.

(a)(1) * * *

(i) Requirements, policies, and procedures to require and conduct background checks, and make a determination of eligibility for child care staff members (including prospective child care staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver services for which assistance is provided under this part as described in paragraph (a)(2) of this section;

* * * * *

(c)(1) The State, Territory, or Tribe in coordination with the Lead Agency shall find a child care staff member ineligible for employment for services for which assistance is made available in accordance with this part, if such individual:

* * * * *

(v) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, and sexual assault, or of any misdemeanor involving child pornography.

* * * * *

(d) * * *

(3) * * *

(i) The staff member received qualifying results from a background check described in paragraph (b) of this section;

* * * * *

(4) A prospective staff member may begin work for a child care provider described in paragraph (a)(2)(i) of this section after receiving qualifying results for either the check described at paragraph (b)(1) or (b)(3)(i) of this section in the State where the prospective staff member resides. Pending completion of all background check components in paragraph (b) of this section, the staff member must be supervised at all times by an individual who received a qualifying result on a background check described in paragraph (b) of this section within the past five years.

* * * * *

■ 11. Amend § 98.45 by:
■ a. Revising paragraphs (b)(5) and (6) and (d)(2)(ii);
■ b. Revising paragraphs (f)(1)(ii)(B) and (iii);
■ c. Adding new paragraph (f)(1)(iv);
■ d. Redesignating paragraphs (g) through (l) as paragraphs (h) through (m);
■ e. Adding a new paragraph (g);
■ f. Revising newly redesignated paragraphs (l)(3) and (4) and (m); and,
■ g. Adding a new paragraph (n).

The revisions and additions read as follows:

§ 98.45 Equal access.

* * * * *

(b) * * *

(5) How co-payments based on a sliding fee scale are affordable and do not exceed 7 percent of income for all families, as stipulated at paragraph (l) of this section; if applicable, a rationale for the Lead Agency's policy on whether child care providers may charge additional amounts to families above the required family co-payment, including a demonstration that the policy promotes affordability and access; analysis of the interaction between any such additional amounts with the required family co-payments, and of the ability of subsidy payment rates to provide access to care without additional fees; and data on the extent to which CCDF providers charge such additional amounts (based on information obtained in accordance with paragraph (d)(2) of this section);

(6) How the Lead Agency's payment practices support equal access to a range of providers by providing stability of funding and encouraging more child care providers to serve children receiving CCDF subsidies, in accordance with paragraph (m) of this section;

* * * * *

(d) * * *

(2) * * *

(ii) CCDF child care providers charge amounts to families more than the required family co-payment (under paragraph (l) of this section) in instances where the provider's price exceeds the subsidy payment, including data on the size and frequency of any such amounts.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(B) Higher-quality care, as defined by the Lead Agency using a quality rating and improvement system or other system of quality indicators, at each level;

(iii) The Lead Agency's response to stakeholder views and comments; and,

(iv) The data and summary required at paragraph (d)(2)(ii) of this section.

* * * * *

(g) To facilitate parent choice, increase program quality, build supply, and better reflect the cost of providing care, it is permissible for a Lead Agency to pay an eligible child care provider the Lead Agency's established payment rate at paragraph (a) of this section, which may be more than the price charged to children not receiving CCDF subsidies.

* * * * *

(l) * * *

(3) Provides for affordable family co-payments that are not a barrier to families receiving assistance under this part, not to exceed 7 percent of income for all families, regardless of the number of children in care who may be receiving CCDF assistance; and

(4) At Lead Agency discretion, allows for co-payments to be waived for families whose incomes are at or below 150 percent of the poverty level for a family of the same size, that have children who are in foster or kinship care or otherwise receive or need to receive protective services, that are experiencing homelessness, that have children who have a disability as defined at § 98.2, that are enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq.*), or that meet other criteria established by the Lead Agency.

(m) The Lead Agency shall demonstrate in the Plan that it has established payment practices applicable to all CCDF child care providers that reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, which must include (unless the Lead Agency can demonstrate that such practices are not generally-accepted for a type of child care setting):

(1) Ensure timeliness of payment to child care providers by paying in advance of or at the beginning of the delivery of child care services to children receiving assistance under this part;

(2) Support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences by:

(i) Basing payment on a child's authorized enrollment; or,

(ii) An alternative approach for which the Lead Agency provides a justification in its Plan that the requirements at paragraph (m)(2)(i) of this section are not practicable, including evidence that the alternative approach will not undermine the stability of child care programs.

(3) Pay providers on a part-time or full-time basis (rather than paying for hours of service or smaller increments of time); and

(4) Pay for reasonable mandatory registration fees that the provider charges to private-paying parents.

(n) The Lead Agency shall demonstrate in the Plan that it has established payment practices applicable to all CCDF providers that:

(1) Ensure child care providers receive payment for any services in accordance with a written payment agreement or authorization for services that includes, at a minimum, information regarding payment policies, including rates, schedules, any fees charged to providers, and the dispute resolution process required by paragraph (n)(3);

(2) Ensure child care providers receive prompt notice of changes to a family's eligibility status that may impact payment, and that such notice is sent to providers no later than the day the Lead Agency becomes aware that such a change will occur;

(3) Include timely appeal and resolution processes for any payment inaccuracies and disputes;

(4) May include taking precautionary measures when a provider is suspected of fiscal mismanagement; and

(5) Ensure the total payment received by CCDF child care providers is not reduced by the determination of affordable family co-payment as described in the sliding fee scale at § 98.45(l).

■ 12. Amend § 98.50 by:

■ a. Revising paragraphs (a)(3) and (b)(1) and (2);

■ b. Adding paragraph (b)(4); and

■ c. Revising paragraph (e) introductory text.

The revisions and addition read as follows:

§ 98.50 Child care services.

(a) * * *

(3) Using funding methods provided for in § 98.30 including grants or contracts for slots for children in underserved geographic areas, for infants and toddlers, and children with disabilities. Grants solely to improve the quality of child care services like those in (b) of this section would not satisfy the requirements at § 98.30(b); and

* * * * *

(b) * * *

(1) No less than nine percent shall be used for activities designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53; and

(2) No less than three percent shall be used to carry out activities at § 98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

* * * * *

(4) Amounts reserved pursuant to this subsection may not be used to satisfy requirements at § 98.30(b).

* * * * *

(e) Not less than 70 percent of the State and Territory Mandatory and Federal and State share of State Matching Funds shall be used to meet the child care needs of families who:

* * * * *

■ 13. Amend § 98.53 by redesignating (b) through (f) as (c) through (g) and adding a new paragraph (b) to read as follows:

§ 98.53 Activities to improve the quality of child care.

* * * * *

(b) Lead Agencies are strongly encouraged to engage families and providers with direct experience in the child care subsidy system to improve the quality of child care and child care subsidy policy. Lead Agencies may expend quality funds to support such engagement including:

(1) Planning and implementing an engagement strategy to solicit and implement feedback from families, child care providers, and staff who have direct experience with the child care subsidy program and/or quality improvement activities;

(2) Compensating participating parents, child care providers, and child care staff for their time and for expenses incurred as a result of their participation (*i.e.* transportation, child care); and

(3) Hiring parents, child care providers, or child care staff to serve as subject matter experts in the development or refinement of subsidy policy and quality initiatives.

* * * * *

■ 14. Amend § 98.60 by:

■ a. Revising and republishing paragraph (a);

■ b. Redesignating paragraphs (d)(3) through (d)(8) to (d)(4) through (d)(9); and

■ c. Adding a new paragraph (d)(3).

The revisions and additions read as follows:

§ 98.60 Availability of funds.

(a) The CCDF is available, subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget as follows:

(1) Discretionary Funds are available to States, Territories, and Tribes;

(2) State Mandatory and Matching Funds are available to States;

(3) Territory Mandatory Funds are available to Territories; and

(4) Tribal Mandatory Funds are available to Tribes.

* * * * *

(d) * * *

(3) Mandatory Funds for Territories shall be obligated in the fiscal year in which funds are granted and liquidated no later than the end of the succeeding fiscal year.

* * * * *

■ 15. Amend § 98.62 by revising paragraphs (a) introductory text and (b) introductory text and adding paragraph (d) to read as follows:

§ 98.62 Allotments from the Mandatory Fund.

(a) Each of the 50 States and the District of Columbia will be allocated from the funds appropriated under section 418(a)(3)(A) of the Social Security Act, less the amounts reserved for technical assistance pursuant to § 98.60(b)(1) an amount of funds equal to the greater of:

* * * * *

(b) For Indian Tribes and tribal organizations will be allocated from the funds appropriated under section 418(a)(3)(B) of the Social Security Act shall be allocated according to the formula at paragraph (c) of this section. In Alaska, only the following 13 entities

shall receive allocations under this subpart, in accordance with the formula at paragraph (c) of this section:

* * * * *

(d) The Territories will be allocated from the funds appropriated under section 418(a)(3)(C) of the Social Security Act based upon the following factors:

(1) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(2) An Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(i) Per capita income shall be:

(A) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(B) Determined every two years.

(ii) [Reserved]

■ 16. Amend § 98.64 by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 98.64 Reallotment and redistribution of funds.

(a) According to the provisions of this section State and Tribal Discretionary Funds are subject to reallotment, and State Matching Funds and Territory Mandatory Funds are subject to redistribution. State funds are reallotted or redistributed only to States as defined for the original allocation. Tribal funds are reallotted only to Tribes. Mandatory Funds granted to Territories are redistributed only to Territories. Discretionary Funds granted to the Territories are not subject to reallotment. Any Discretionary funds granted to the Territories that are returned after they have been allotted will revert to the Federal Government.

* * * * *

(e)(1) Any portion of the Mandatory Funds that are not obligated in the period for which the grant is made shall be redistributed. Territory Mandatory Funds, if any, will be redistributed on the request of, and only to, those other Territories that have obligated their entire Territory Mandatory Fund allocation in full for the period for which the grant was first made.

(2) The amount of Mandatory Funds granted to a Territory that will be made available for redistribution will be based on the Territory's financial report to ACF for the Child Care and Development Fund (ACF–696) and is subject to the monetary limits at paragraph (b)(2) of this section.

(3) A Territory eligible to receive redistributed Mandatory Funds shall also use the ACF–696 to request its share of the redistributed funds, if any.

(4) A Territory's share of redistributed Mandatory Funds is based on the same ratio as § 98.62(d).

(5) Redistributed funds are considered part of the grant for the fiscal year in which the redistribution occurs.

■ 17. Amend § 98.65 by revising paragraph (h)(3) to read as follows:

§ 98.65 Audits and financial reporting

* * * * *

(h) * * *

(3) Direct services for both grant or contracted slots and certificates; * * *

* * * * *

■ 18. Amend § 98.71 by;

■ a. Removing paragraph (a)(11);

■ b. Redesignating paragraphs (b)(5) and (6) as (b)(6) and (7); and

■ c. Adding a new paragraph (b)(5).

The addition reads as follows:

§ 98.71 Content of reports.

(b) * * *

(5) For Lead Agencies implementing presumptive eligibility in accordance with § 98.21(e):

(i) The number of presumptively eligible children ultimately determined fully eligible;

(ii) The number of presumptively eligible children for whom the family does not complete the documentation for full eligibility verification; and,

(iii) The number of presumptively eligible children who are determined not to be eligible after full verification;

* * * * *

■ 19. Amend § 98.81 by revising paragraphs (b)(6)(vii) through (ix) and adding paragraphs (b)(6)(x) through (xii) to read as follows:

§ 98.81 Application and Plan procedures.

* * * * *

(b) * * *

(6) * * *

(vii) The description of the sliding fee scale at § 98.16(k);

(viii) The description of the market rate survey or alternative methodology at § 98.16(r);

(ix) The description relating to Matching Funds at § 98.16(w);

(x) The description of how the Lead Agency uses grants or contracts for supply building at § 98.16(z);

(xi) The description of how the Lead Agency prioritizes increasing access to high-quality child care in areas with high concentration of poverty at § 98.16(aa); and

(xii) The description of provider payment practices at § 98.16(ee).

* * * * *

■ 20. Amend § 98.83 by revising and publishing paragraph (d)(1) and revising paragraphs (g) introductory text and (g)(1) and (2) to read as follows:

§ 98.83 Requirements for tribal programs.

* * * * *

(d)(1) Tribal Lead Agencies shall not be subject to:

(i) The requirements to use grants or contracts to build supply for certain populations at § 98.30(b);

(ii) The requirement to produce a consumer education website at § 98.33(a). Tribal Lead Agencies still must collect and disseminate the provider-specific consumer education information described at § 98.33(a) through (d), but may do so using methods other than a website;

(iii) The requirement to have licensing applicable to child care services at § 98.40;

(iv) The requirement for a training and professional development framework at § 98.44(a);

(v) The market rate survey or alternative methodology described at § 98.45(b)(2) and the related requirements at § 98.45(c), (d), (e), and (f);

(vi) The requirement for a sliding fee scale at § 98.45(l);

(vii) The requirement to have provider payment practices that reflect generally accepted payment practices at § 98.45(m);

(viii) The requirement that Lead Agencies shall give priority for services to children of families with very low family income at § 98.46(a)(1);

(ix) The requirement that Lead Agencies shall prioritize increasing access to high-quality child care in areas with significant concentrations of poverty and unemployment at § 98.46(b);

(x) The requirements to use grants or contracts at § 98.50(a)(3);

(xi) The requirements about Mandatory and Matching Funds at § 98.50(e);

(xii) The requirement to complete the quality progress report at § 98.53(f);

(xiii) The requirement that Lead Agencies shall expend no more than five percent from each year's allotment on administrative costs at § 98.54(a); and

(xiv) The Matching fund requirements at §§ 98.55 and 98.63.

* * * * *

(g) Of the aggregate amount of funds expended (*i.e.,* Discretionary and Mandatory Funds):

(1) For Tribal Lead Agencies with large, medium, and small allocations, no less than nine percent shall be used for activities designed to improve the

quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53; and

(2) For Tribal Lead Agencies with large and medium allocations, no less than three percent shall be used to carry out activities at § 98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

* * * * *

■ 21. Amend § 98.84 by revising paragraph (e) to read as follows:

§ 98.84 Construction and renovation of child care facilities.

* * * * *

(e) In lieu of obligation and liquidation requirements at § 98.60(e), Tribal Lead Agencies shall obligate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded. Tribal construction and major renovation funds must be liquidated at the end of the second succeeding fiscal year following this obligation deadline. Any Tribal construction and major renovation funds that remain unliquidated by the end of this period will revert to the Federal government.

* * * * *

■ 22. Amend § 98.102 by revising and republishing paragraph (c) to read as follows:

§ 98.102 Content of Error Rate Reports.

* * * * *

(c) Any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit to the Assistant Secretary for approval a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan.

(1) The corrective action plan must be submitted within 60 days of the deadline for submitting the Lead Agency's standard error rate report required by paragraph (b) of this section.

(2) The corrective action plan must include the following:

(i) Identification of a senior accountable official;

(ii) Root causes of error as identified on the Lead Agency's most recent ACF–404 and other root causes identified;

(iii) Detailed descriptions of actions to reduce improper payments and the name and/or title of the individual responsible for ensuring actions are completed;

(iv) Milestones to indicate progress towards action completion and error reduction goals;

(v) A timeline for completing each action of the plan within 1 year, and for reducing the improper payment rate below the threshold established by the Secretary; and

(vi) Targets for future improper payment rates.

(3) Subsequent progress reports including updated corrective action plans must be submitted as requested by the Assistant Secretary until the Lead Agency's improper payment rate no longer exceeds the threshold.

(4) Failure to carry out actions as described in the approved corrective action plan or to fulfill requirements in this paragraph (c) will be grounds for a penalty or sanction under § 98.92.

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Part V

The President

Executive Order 14117—Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern

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Presidential Documents

Title 3—

The President

Executive Order 14117 of February 28, 2024

Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern

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

I, JOSEPH R. BIDEN JR., President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13873 of May 15, 2019 (Securing the Information and Communications Technology and Services Supply Chain), and further addressed with additional measures in Executive Order 14034 of June 9, 2021 (Protecting Americans' Sensitive Data from Foreign Adversaries). The continuing effort of certain countries of concern to access Americans' sensitive personal data and United States Government-related data constitutes an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security and foreign policy of the United States. Access to Americans' bulk sensitive personal data or United States Government-related data increases the ability of countries of concern to engage in a wide range of malicious activities. Countries of concern can rely on advanced technologies, including artificial intelligence (AI), to analyze and manipulate bulk sensitive personal data to engage in espionage, influence, kinetic, or cyber operations or to identify other potential strategic advantages over the United States. Countries of concern can also use access to bulk data sets to fuel the creation and refinement of AI and other advanced technologies, thereby improving their ability to exploit the underlying data and exacerbating the national security and foreign policy threats. In addition, access to some categories of sensitive personal data linked to populations and locations associated with the Federal Government—including the military—regardless of volume, can be used to reveal insights about those populations and locations that threaten national security. The growing exploitation of Americans' sensitive personal data threatens the development of an international technology ecosystem that protects our security, privacy, and human rights.

Accordingly, to address this threat and to take further steps with respect to the national emergency declared in Executive Order 13873, it is hereby ordered that:

Section 1. *Policy.* It is the policy of the United States to restrict access by countries of concern to Americans' bulk sensitive personal data and United States Government-related data when such access would pose an unacceptable risk to the national security of the United States. At the same time, the United States continues to support open, global, interoperable, reliable, and secure flows of data across borders, as well as maintaining vital consumer, economic, scientific, and trade relationships that the United States has with other countries.

The continuing effort by countries of concern to access Americans' bulk sensitive personal data and United States Government-related data threatens the national security and foreign policy of the United States. Such countries' governments may seek to access and use sensitive personal data in a manner

that is not in accordance with democratic values, safeguards for privacy, and other human rights and freedoms. Such countries' approach stands in sharp contrast to the practices of democracies with respect to sensitive personal data and principles reflected in the Organisation for Economic Co-operation and Development Declaration on Government Access to Personal Data Held by Private Sector Entities. Unrestricted transfers of Americans' bulk sensitive personal data and United States Government-related data to such countries of concern may therefore enable them to exploit such data for a variety of nefarious purposes, including to engage in malicious cyber-enabled activities. Countries of concern can use their access to Americans' bulk sensitive personal data and United States Government-related data to track and build profiles on United States individuals, including Federal employees and contractors, for illicit purposes, including blackmail and espionage. Access to Americans' bulk sensitive personal data and United States Government-related data by countries of concern through data brokerages, third-party vendor agreements, employment agreements, investment agreements, or other such arrangements poses particular and unacceptable risks to our national security given that these arrangements often can provide countries of concern with direct and unfettered access to Americans' bulk sensitive personal data. Countries of concern can use access to United States persons' bulk sensitive personal data and United States Government-related data to collect information on activists, academics, journalists, dissidents, political figures, or members of non-governmental organizations or marginalized communities in order to intimidate such persons; curb dissent or political opposition; otherwise limit freedoms of expression, peaceful assembly, or association; or enable other forms of suppression of civil liberties.

This risk of access to Americans' bulk sensitive personal data and United States Government-related data is not limited to direct access by countries of concern. Entities owned by, and entities or individuals controlled by or subject to the jurisdiction or direction of, a country of concern may enable the government of a country of concern to indirectly access such data. For example, a country of concern may have cyber, national security, or intelligence laws that, without sufficient legal safeguards, obligate such entities and individuals to provide that country's intelligence services access to Americans' bulk sensitive personal data and United States Government-related data.

These risks may be exacerbated when countries of concern use bulk sensitive personal data to develop AI capabilities and algorithms that, in turn, enable the use of large datasets in increasingly sophisticated and effective ways to the detriment of United States national security. Countries of concern can use AI to target United States persons for espionage or blackmail by, for example, recognizing patterns across multiple unrelated datasets to identify potential individuals whose links to the Federal Government would be otherwise obscured in a single dataset.

While aspects of this threat have been addressed in previous executive actions, such as Executive Order 13694 of April 1, 2015 (Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities), as amended, additional steps need to be taken to address this threat.

At the same time, the United States is committed to promoting an open, global, interoperable, reliable, and secure Internet; protecting human rights online and offline; supporting a vibrant, global economy by promoting cross-border data flows required to enable international commerce and trade; and facilitating open investment. To ensure that the United States continues to meet these important policy objectives, this order does not authorize the imposition of generalized data localization requirements to store Americans' bulk sensitive personal data or United States Government-related data within the United States or to locate computing facilities used to process Americans' bulk sensitive personal data or United States Government-related

data within the United States. This order also does not broadly prohibit United States persons from conducting commercial transactions, including exchanging financial and other data as part of the sale of commercial goods and services, with entities and individuals located in or subject to the control, direction, or jurisdiction of countries of concern, or impose measures aimed at a broader decoupling of the substantial consumer, economic, scientific, and trade relationships that the United States has with other countries. In addition, my Administration has made commitments to increase public access to the results of taxpayer-funded scientific research, the sharing and interoperability of electronic health information, and patient access to their data. The national security restrictions established in this order are specific, carefully calibrated actions to minimize the risks associated with access to bulk sensitive personal data and United States Government-related data by countries of concern while minimizing disruption to commercial activity. This order shall be implemented consistent with these policy objectives, including by tailoring any regulations issued and actions taken pursuant to this order to address the national security threat posed by access to Americans' bulk sensitive personal data and United States Government-related data by countries of concern.

Sec. 2. *Prohibited and Restricted Transactions.* (a) To assist in addressing the national emergency described in this order, the Attorney General, in coordination with the Secretary of Homeland Security and in consultation with the heads of relevant agencies, shall issue, subject to public notice and comment, regulations that prohibit or otherwise restrict United States persons from engaging in any acquisition, holding, use, transfer, transportation, or exportation of, or dealing in, any property in which a foreign country or national thereof has any interest (transaction), where the transaction:

(i) involves bulk sensitive personal data or United States Government-related data, as further defined by regulations issued by the Attorney General pursuant to this section;

(ii) is a member of a class of transactions that has been determined by the Attorney General, in regulations issued by the Attorney General pursuant to this section, to pose an unacceptable risk to the national security of the United States because the transactions may enable countries of concern or covered persons to access bulk sensitive personal data or United States Government-related data in a manner that contributes to the national emergency described in this order;

(iii) was initiated, is pending, or will be completed after the effective date of the regulations issued by the Attorney General pursuant to this section;

(iv) does not qualify for an exemption provided in, or is not authorized by a license issued pursuant to, the regulations issued by the Attorney General pursuant to this section; and

(v) is not, as defined by regulations issued by the Attorney General pursuant to this section, ordinarily incident to and part of the provision of financial services, including banking, capital markets, and financial insurance services, or required for compliance with any Federal statutory or regulatory requirements, including any regulations, guidance, or orders implementing those requirements.

(b) The Attorney General, in consultation with the heads of relevant agencies, is authorized to take such actions, including the promulgation of rules and regulations, and to employ all other powers granted to the President by IEEPA, as may be necessary or appropriate to carry out the purposes of this order. Executive departments and agencies (agencies) are directed to take all appropriate measures within their authority to implement the provisions of this order.

(c) Within 180 days of the date of this order, the Attorney General, in coordination with the Secretary of Homeland Security, and in consultation

with the heads of relevant agencies, shall publish the proposed rule described in subsection (a) of this section for notice and comment. This proposed rule shall:

(i) identify classes of transactions that meet the criteria specified in subsection (a)(ii) of this section that are to be prohibited (prohibited transactions);

(ii) identify classes of transactions that meet the criteria specified in subsection (a)(ii) of this section and for which the Attorney General determines that security requirements established by the Secretary of Homeland Security, through the Director of the Cybersecurity and Infrastructure Security Agency, in accordance with the process described in subsection (d) of this section, adequately mitigate the risk of access by countries of concern or covered persons to bulk sensitive personal data or United States Government-related data (restricted transactions);

(iii) identify, with the concurrence of the Secretary of State and the Secretary of Commerce, countries of concern and, as appropriate, classes of covered persons for the purposes of this order;

(iv) establish, as appropriate, mechanisms to provide additional clarity to persons affected by this order and any regulations implementing this order (including by designations of covered persons and licensing decisions);

(v) establish a process to issue (including to modify or rescind), in concurrence with the Secretary of State, the Secretary of Commerce, and the Secretary of Homeland Security, and in consultation with the heads of other relevant agencies, as appropriate, licenses authorizing transactions that would otherwise be prohibited transactions or restricted transactions;

(vi) further define the terms identified in section 7 of this order and any other terms used in this order or any regulations implementing this order;

(vii) address, as appropriate, coordination with other United States Government entities, such as the Committee on Foreign Investment in the United States, the Office of Foreign Assets Control within the Department of the Treasury, the Bureau of Industry and Security within the Department of Commerce, and other entities implementing relevant programs, including those implementing Executive Order 13873; Executive Order 14034; and Executive Order 13913 of April 4, 2020 (Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector); and

(viii) address the need for, as appropriate, recordkeeping and reporting of transactions to inform investigative, enforcement, and regulatory efforts.

(d) The Secretary of Homeland Security, acting through the Director of the Cybersecurity and Infrastructure Security Agency, shall, in coordination with the Attorney General and in consultation with the heads of relevant agencies, propose, seek public comment on, and publish security requirements that address the unacceptable risk posed by restricted transactions, as identified by the Attorney General pursuant to this section. These requirements shall be based on the Cybersecurity and Privacy Frameworks developed by the National Institute of Standards and Technology.

(i) The Secretary of Homeland Security, acting through the Director of the Cybersecurity and Infrastructure Security Agency, shall, in coordination with the Attorney General, issue any interpretive guidance regarding the security requirements.

(ii) The Attorney General shall, in coordination with the Secretary of Homeland Security acting through the Director of the Cybersecurity and Infrastructure Security Agency, issue enforcement guidance regarding the security requirements.

(e) The Secretary of Homeland Security, in coordination with the Attorney General, is hereby authorized to take such actions, including promulgating

rules, regulations, standards, and requirements; issuing interpretive guidance; and employing all other powers granted to the President by IEEPA as may be necessary to carry out the purposes described in subsection (d) of this section.

(f) In exercising the authority delegated in subsection (b) of this section, the Attorney General, in coordination with the Secretary of Homeland Security and in consultation with the heads of relevant agencies, may, in addition to the rulemaking directed in subsection (c) of this section, propose one or more regulations to further implement this section, including to identify additional classes of prohibited transactions; to identify additional classes of restricted transactions; with the concurrence of the Secretary of State and the Secretary of Commerce, to identify new or remove existing countries of concern and, as appropriate, classes of covered persons for the purposes of this order; and to establish a mechanism for the Attorney General to monitor whether restricted transactions comply with the security requirements established under subsection (d) of this section.

(g) Any proposed regulations implementing this section:

(i) shall reflect consideration of the nature of the class of transaction involving bulk sensitive personal data or United States Government-related data, the volume of bulk sensitive personal data involved in the transaction, and other factors, as appropriate;

(ii) shall establish thresholds and due diligence requirements for entities to use in assessing whether a transaction is a prohibited transaction or a restricted transaction;

(iii) shall not establish generalized data localization requirements to store bulk sensitive personal data or United States Government-related data within the United States or to locate computing facilities used to process bulk sensitive personal data or United States Government-related data within the United States;

(iv) shall account for any legal obligations applicable to the United States Government relating to public access to the results of taxpayer-funded scientific research, the sharing and interoperability of electronic health information, and patient access to their data; and

(v) shall not address transactions to the extent that they involve types of human 'omic data other than human genomic data before the submission of the report described in section 6 of this order.

(h) The prohibitions promulgated pursuant to this section apply except to the extent provided by law, including by statute or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of the applicable regulations directed by this order.

(i) Any transaction or other activity that has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions promulgated pursuant to this section is prohibited.

(j) Any conspiracy formed to violate any of the prohibitions promulgated pursuant to this section is prohibited.

(k) In regulations issued by the Attorney General under this section, the Attorney General may prohibit United States persons from knowingly directing transactions if such transactions would be prohibited transactions under regulations issued pursuant to this order if engaged in by a United States person.

(l) The Attorney General may, consistent with applicable law, redelegate any of the authorities conferred on the Attorney General pursuant to this section within the Department of Justice. The Secretary of Homeland Security may, consistent with applicable law, redelegate any of the authorities conferred on the Secretary of Homeland Security pursuant to this section within the Department of Homeland Security.

(m) The Attorney General, in coordination with the Secretary of Homeland Security and in consultation with the heads of relevant agencies, is hereby authorized to submit recurring and final reports to the Congress related to this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 3. *Protecting Sensitive Personal Data.* (a) Access to bulk sensitive personal data and United States Government-related data by countries of concern can be enabled through the transmission of data via network infrastructure that is subject to the jurisdiction or control of countries of concern. The risk of access to this data by countries of concern can be, and sometime is, exacerbated where the data transits a submarine cable that is owned or operated by persons owned by, controlled by, or subject to the jurisdiction or direction of a country of concern, or that connects to the United States and terminates in the jurisdiction of a country of concern. Additionally, the same risk of access by a country of concern is further exacerbated in instances where a submarine cable is designed, built, and operated for the express purpose of transferring data, including bulk sensitive personal data or United States Government-related data, to a specific data center located in a foreign jurisdiction. To address this threat, the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) shall, to the extent consistent with its existing authority and applicable law:

(i) prioritize, for purposes of and in reliance on the process set forth in section 6 of Executive Order 13913, the initiation of reviews of existing licenses for submarine cable systems that are owned or operated by persons owned by, controlled by, or subject to the jurisdiction or direction of a country of concern, or that terminate in the jurisdiction of a country of concern;

(ii) issue policy guidance, in consultation with the Committee's Advisors as defined in section 3(d) of Executive Order 13913, regarding the Committee's reviews of license applications and existing licenses, including the assessment of third-party risks regarding access to data by countries of concern; and

(iii) address, on an ongoing basis, the national security and law enforcement risks related to access by countries of concern to bulk sensitive personal data described in this order that may be presented by any new application or existing license reviewed by the Committee to land or operate a submarine cable system, including by updating the Memorandum of Understanding required under section 11 of Executive Order 13913 and by revising the Committee's standard mitigation measures, with the approval of the Committee's Advisors, which may include, as appropriate, any of the security requirements contemplated by section 2(d) of this order.

(b) Entities in the United States healthcare market can access bulk sensitive personal data, including personal health data and human genomic data, through partnerships and agreements with United States healthcare providers and research institutions. Even if such data is anonymized, pseudonymized, or de-identified, advances in technology, combined with access by countries of concern to large data sets, increasingly enable countries of concern that access this data to re-identify or de-anonymize data, which may reveal the exploitable health information of United States persons. While the United States supports open scientific data and sample sharing to accelerate research and development through international cooperation and collaboration, the following additional steps must be taken to protect United States persons' sensitive personal health data and human genomic data from the threat identified in this order:

(i) The Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, and the Director of the National Science Foundation shall consider taking steps, including issuing regulations, guidance, or orders, as appropriate and consistent with the legal authorities authorizing relevant Federal assistance programs, to prohibit the provision of assistance that enables access by countries of concern or covered persons

to United States persons' bulk sensitive personal data, including personal health data and human genomic data, or to impose mitigation measures with respect to such assistance, which may be consistent with the security requirements adopted under section 2(d) of this order, on the recipients of Federal assistance to address this threat. The Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, and the Director of the National Science Foundation shall, in consultation with each other, develop and publish guidance to assist United States research entities in ensuring protection of their bulk sensitive personal data.

(ii) Within 1 year of the date of this order, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, and the Director of the National Science Foundation shall jointly submit a report to the President through the Assistant to the President for National Security Affairs (APNSA) detailing their progress in implementing this subsection.

(c) Entities in the data brokerage industry enable access to bulk sensitive personal data and United States Government-related data by countries of concern and covered persons. These entities pose a particular risk of contributing to the national emergency described in this order because they routinely engage in the collection, assembly, evaluation, and dissemination of bulk sensitive personal data and of the subset of United States Government-related data regarding United States consumers. The Director of the Consumer Financial Protection Bureau (CFPB) is encouraged to consider taking steps, consistent with CFPB's existing legal authorities, to address this aspect of the threat and to enhance compliance with Federal consumer protection law, including by continuing to pursue the rulemaking proposals that CFPB identified at the September 2023 Small Business Advisory Panel for Consumer Reporting Rulemaking.

Sec. 4. *Assessing the National Security Risks Arising from Prior Transfers of United States Persons' Bulk Sensitive Personal Data.* Within 120 days of the effective date of the regulations issued pursuant to section 2(c) of this order, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, in consultation with the heads of relevant agencies, shall recommend to the APNSA appropriate actions to detect, assess, and mitigate national security risks arising from prior transfers of United States persons' bulk sensitive personal data to countries of concern. Within 150 days of the effective date of the regulations issued pursuant to section 2(c) of this order, the APNSA shall review these recommendations and, as appropriate, consult with the Attorney General, the Secretary of Homeland Security, and the heads of relevant agencies on implementing the recommendations consistent with applicable law.

Sec. 5. *Report to the President.* (a) Within 1 year of the effective date of the regulations issued pursuant to section 2(c) of this order, the Attorney General, in consultation with the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Homeland Security, shall submit a report to the President through the APNSA assessing, to the extent practicable:

(i) the effectiveness of the measures imposed under this order in addressing threats to the national security of the United States described in this order; and

(ii) the economic impact of the implementation of this order, including on the international competitiveness of United States industry.

(b) In preparing the report described in subsection (a) of this section, the Attorney General shall solicit and consider public comments concerning the economic impact of this order.

Sec. 6. *Assessing Risks Associated with Human 'omic Data.* Within 120 days of the date of this order, the APNSA, the Assistant to the President and Director of the Domestic Policy Council, the Director of the Office of Science and Technology Policy, and the Director of the Office of Pandemic

Preparedness and Response Policy, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Director of the National Science Foundation, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation, shall submit a report to the President, through the APNSA, assessing the risks and benefits of regulating transactions involving types of human 'omic data other than human genomic data, such as human proteomic data, human epigenomic data, and human metabolomic data, and recommending the extent to which such transactions should be regulated pursuant to section 2 of this order. This report and recommendation shall consider the risks to United States persons and national security, as well as the economic and scientific costs of regulating transactions that provide countries of concern or covered persons access to these data types.

Sec. 7. *Definitions.* For purposes of this order:

(a) The term ''access'' means logical or physical access, including the ability to obtain, read, copy, decrypt, edit, divert, release, affect, alter the state of, or otherwise view or receive, in any form, including through information technology systems, cloud computing platforms, networks, security systems, equipment, or software.

(b) The term ''bulk'' means an amount of sensitive personal data that meets or exceeds a threshold over a set period of time, as specified in regulations issued by the Attorney General pursuant to section 2 of this order.

(c) The term ''country of concern'' means any foreign government that, as determined by the Attorney General pursuant to section 2(c)(iii) or 2(f) of this order, has engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or the security and safety of United States persons, and poses a significant risk of exploiting bulk sensitive personal data or United States Government-related data to the detriment of the national security of the United States or the security and safety of United States persons, as specified in regulations issued by the Attorney General pursuant to section 2 of this order.

(d) The term ''covered person'' means an entity owned by, controlled by, or subject to the jurisdiction or direction of a country of concern; a foreign person who is an employee or contractor of such an entity; a foreign person who is an employee or contractor of a country of concern; a foreign person who is primarily resident in the territorial jurisdiction of a country of concern; or any person designated by the Attorney General as being owned or controlled by or subject to the jurisdiction or direction of a country of concern, as acting on behalf of or purporting to act on behalf of a country of concern or other covered person, or as knowingly causing or directing, directly or indirectly, a violation of this order or any regulations implementing this order.

(e) The term ''covered personal identifiers'' means, as determined by the Attorney General in regulations issued pursuant to section 2 of this order, specifically listed classes of personally identifiable data that are reasonably linked to an individual, and that—whether in combination with each other, with other sensitive personal data, or with other data that is disclosed by a transacting party pursuant to the transaction and that makes the personally identifiable data exploitable by a country of concern—could be used to identify an individual from a data set or link data across multiple data sets to an individual. The term ''covered personal identifiers'' does not include:

(i) demographic or contact data that is linked only to another piece of demographic or contact data (such as first and last name, birth date, birthplace, zip code, residential street or postal address, phone number, and email address and similar public account identifiers); or

(ii) a network-based identifier, account-authentication data, or call-detail data that is linked only to another network-based identifier, account-

authentication data, or call-detail data for the provision of telecommunications, networking, or similar services.

(f) The term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

(g) The term ''foreign person'' means any person that is not a United States person.

(h) The term ''human genomic data'' refers to data representing the nucleic acid sequences that constitute the entire set or a subset of the genetic instructions found in a cell.

(i) The term ''human 'omic data'' means data generated from humans that characterizes or quantifies human biological molecule(s), such as human genomic data, epigenomic data, proteomic data, transcriptomic data, microbiomic data, or metabolomic data, as further defined by regulations issued by the Attorney General pursuant to section 2 of this order, which may be informed by the report described in section 6 of this order.

(j) The term ''person'' means an individual or entity.

(k) The term ''relevant agencies'' means the Department of State, the Department of the Treasury, the Department of Defense, the Department of Commerce, the Department of Health and Human Services, the Office of the United States Trade Representative, the Office of the Director of National Intelligence, the Office of the National Cyber Director, the Office of Management and Budget, the Federal Trade Commission, the Federal Communications Commission, and any other agency or office that the Attorney General determines appropriate.

(l) The term ''sensitive personal data'' means, to the extent consistent with applicable law including sections 203(b)(1) and (b)(3) of IEEPA, covered personal identifiers, geolocation and related sensor data, biometric identifiers, human 'omic data, personal health data, personal financial data, or any combination thereof, as further defined in regulations issued by the Attorney General pursuant to section 2 of this order, and that could be exploited by a country of concern to harm United States national security if that data is linked or linkable to any identifiable United States individual or to a discrete and identifiable group of United States individuals. The term ''sensitive personal data'' does not include:

(i) data that is a matter of public record, such as court records or other government records, that is lawfully and generally available to the public;

(ii) personal communications that are within the scope of section 203(b)(1) of IEEPA; or

(iii) information or informational materials within the scope of section 203(b)(3) of IEEPA.

(m) The term ''United States Government-related data'' means sensitive personal data that, regardless of volume, the Attorney General determines poses a heightened risk of being exploited by a country of concern to harm United States national security and that:

(i) a transacting party identifies as being linked or linkable to categories of current or recent former employees or contractors, or former senior officials, of the Federal Government, including the military, as specified in regulations issued by the Attorney General pursuant to section 2 of this order;

(ii) is linked to categories of data that could be used to identify current or recent former employees or contractors, or former senior officials, of the Federal Government, including the military, as specified in regulations issued by the Attorney General pursuant to section 2 of this order; or

(iii) is linked or linkable to certain sensitive locations, the geographical areas of which will be specified publicly, that are controlled by the Federal Government, including the military.

(n) The term ''United States person'' means any United States citizen, national, or lawful permanent resident; any individual admitted to the United

States as a refugee under 8 U.S.C. 1157 or granted asylum under 8 U.S.C. 1158; any entity organized solely under the laws of the United States or any jurisdiction within the United States (including foreign branches); or any person in the United States.

Sec. 8. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

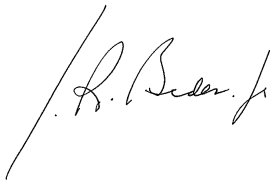
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) Nothing in this order shall prohibit transactions for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof, or transactions conducted pursuant to a grant, contract, or other agreement entered into with the United States Government.

(c) Any disputes that may arise among agencies during the consultation processes described in this order may be resolved pursuant to the interagency process described in National Security Memorandum 2 of February 4, 2021 (Renewing the National Security Council System), or any successor document.

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

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



THE WHITE HOUSE,
February 28, 2024.

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LIST OF PUBLIC LAWS

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Public Laws Electronic Notification Service (PENS)

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 2024

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
March 1	Mar 18	Mar 22	Apr 1	Apr 5	Apr 15	Apr 30	May 30
March 4	Mar 19	Mar 25	Apr 3	Apr 8	Apr 18	May 3	Jun 3
March 5	Mar 20	Mar 26	Apr 4	Apr 9	Apr 19	May 6	Jun 3
March 6	Mar 21	Mar 27	Apr 5	Apr 10	Apr 22	May 6	Jun 4
March 7	Mar 22	Mar 28	Apr 8	Apr 11	Apr 22	May 6	Jun 5
March 8	Mar 25	Mar 29	Apr 8	Apr 12	Apr 22	May 7	Jun 6
March 11	Mar 26	Apr 1	Apr 10	Apr 15	Apr 25	May 10	Jun 10
March 12	Mar 27	Apr 2	Apr 11	Apr 16	Apr 26	May 13	Jun 10
March 13	Mar 28	Apr 3	Apr 12	Apr 17	Apr 29	May 13	Jun 11
March 14	Mar 29	Apr 4	Apr 15	Apr 18	Apr 29	May 13	Jun 12
March 15	Apr 1	Apr 5	Apr 15	Apr 19	Apr 29	May 14	Jun 13
March 18	Apr 2	Apr 8	Apr 17	Apr 22	May 2	May 17	Jun 17
March 19	Apr 3	Apr 9	Apr 18	Apr 23	May 3	May 20	Jun 17
March 20	Apr 4	Apr 10	Apr 19	Apr 24	May 6	May 20	Jun 18
March 21	Apr 5	Apr 11	Apr 22	Apr 25	May 6	May 20	Jun 20
March 22	Apr 8	Apr 12	Apr 22	Apr 26	May 6	May 21	Jun 20
March 25	Apr 9	Apr 15	Apr 24	Apr 29	May 9	May 24	Jun 24
March 26	Apr 10	Apr 16	Apr 25	Apr 30	May 10	May 28	Jun 24
March 27	Apr 11	Apr 17	Apr 26	May 1	May 13	May 28	Jun 25
March 28	Apr 12	Apr 18	Apr 29	May 2	May 13	May 28	Jun 26
March 29	Apr 15	Apr 19	Apr 29	May 3	May 13	May 28	Jun 27