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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

[Docket No. RHS–22–MFH–0022]

RIN 0575–AD25

30-Day Notification of Nonpayment of Rent in Multi-Family Housing Direct Loan Programs

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is issuing a final rule to amend its regulations for the Multi-Family Housing Direct Loans and Grants Programs to require that Section 515, 514, and 516 Multi-Family Housing program borrowers provide tenants with written notification a minimum of 30 days prior to a lease termination or eviction action for nonpayment of rent, as statutorily required by the Coronavirus Aid, Relief, and Economic Security Act, (CARES Act). The ''30-day notice'' requirement applies regardless of the existence of a presidentially declared national emergency or the availability of emergency rental assistance funds. This rule will require this notice to include instructions on how a tenant can cure the nonpayment to avoid eviction, and how to recertify household income. This final rule also adds that the Secretary of Agriculture (Secretary) may require MFH Section 515 and 514 borrowers and Section 516 grantees to issue information as provided by the Secretary during a presidential declaration of a public health emergency.

DATES:

Effective date: April 24, 2024.

Compliance dates: The requirement to provide 30 days' notice prior to eviction for nonpayment of rent is statutory and has been in effect since the enactment of the CARES Act on March 27, 2020. MFH Borrowers will be regarded as out of compliance with the provision if they fail to include the 30-day notice requirements [7 CFR 3560.156(c)(18)(xvi)] in the lease no later than September 25, 2025.

Borrowers will be regarded as out of compliance with the remaining provisions of this rule if they fail to provide: (1) the notice of how to cure; (2) information on how the tenant can recertify their income; and (3) information in a national emergency found in 7 CFR 3560.159(a)(3), after April 24, 2024.

FOR FURTHER INFORMATION CONTACT: Michael Resnik, Multi-Family Housing Asset Management Division, Rural Housing Service, Stop 0782, 1400 Independence Avenue SW, Washington, DC 20250–0782, Telephone: (202) 720–1615, Federal Relay Service at (800) 877–8339; or Email: *michael.resnik@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

USDA's RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers, and much more. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, State and Federal Government agencies, and local communities.

Title V of the Housing Act of 1949 (Act), authorized USDA to make housing loans to farmers to enable them to provide habitable dwellings for themselves or their tenants, lessees, sharecroppers, and laborers. While the initial intent of the Act was focused on farmers, it evolved to authorize USDA to make housing loans and grants to rural residents which established the Single-Family Housing (SFH) Programs and Multi-Family Housing (MFH) Programs. The Housing Act of 1961 added Section 514 to the Act (42 U.S.C. 1484), which provided loans to farmers and farm associations to provide housing for farm laborers. The Senior Citizens Housing Act of 1962, amended the Act by adding Section 515 (42 U.S.C. 1485), which authorized USDA to provide loans for rural rental housing for low- and moderate-income elderly families. Through further amendments, in 1966 and 1977, the age restrictions were removed from the statute to allow Section 515 loans to be used for congregate housing for the elderly and handicapped. This allowed low- and moderate-income families to be eligible for tenancy in Section 515 rental housing.

The RHS operates the MFH Rural Rental Housing Direct Loan Program under Section 515 of the Act for Rural Rental Housing, and Section 514 and Section 516 of the Act for Farm Labor Housing. The MFH Direct Loan Program employs a public-private partnership by providing subsidized loans at an interest rate of one percent to developers to construct or renovate affordable rental complexes in rural areas. This one-percent loan keeps the debt service on the property sufficiently low to support below-market rents affordable to low-income tenants. Many of these projects also utilize low-income housing tax credit (LIHTC) proceeds. These housing properties with subsidized low interest mortgage loans provide affordable housing for eligible very-low and low-income households in rural areas.

The MFH Direct Loan and Grant Programs under Sections 514 and 516 provide low interest loans and grants to provide housing for farmworkers. These workers may work either at the borrower's farm (''on-farm'') or at the borrower's or any other farm (''off-farm'') and meet all program eligibility requirements.

The Coronavirus Aid, Relief, and Economic Security Act, 2020 (''CARES Act'') was signed into law on March 27, 2020, (Pub. L. 116–136), (15 U.S.C. 9001 *et seq.*). Section 4024(c) of the CARES Act [15 U.S.C. 9058 SEC. 4024. TEMPORARY MORATORIUM ON EVICTION FILINGS (a)(2)(B)] requires landlords of certain rental ''covered dwellings'' to provide tenants with at least 30 days' notice before they must vacate the property, notwithstanding a presidentially declared national emergency. ''Covered dwellings'' are defined as rental units in that have a ''Federally backed multifamily mortgage loan.'' Properties receiving assistance under Section 514, 515, or 516 are considered ''covered dwellings.''

II. Purpose

This final rule amends 7 CFR part 3560 to provide a 30-day notification requirement prior to evicting a tenant for nonpayment of rent. This is consistent with this requirement of the CARES Act, where ''The lessor of a covered dwelling unit [. . .] may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate.'' (Pub. L. 116–136, 134 Stat. 281 (2020); 15 U.S.C. 9058). This final rule will also require that the 30-day notice include instructions on how tenants can cure lease violations for nonpayment of rent. These instructions allow tenants to clearly understand how to avoid the commencement of a formal judicial eviction proceeding for nonpayment of rent. In most cases, instructions on how the tenant can cure the nonpayment of rent violation will include the alleged amount of rent owed by the tenant, possibly including any other arrearages due to the MFH property, and the date by which the tenant must pay the rent and arrearages to avoid the filing of an eviction action in state court against the tenant's household.

During a presidentially declared national emergency, this final rule also requires that the MFH Section 515, 514, and 516 borrowers and grantees must provide tenants with Agency-provided information. In particular, the Secretary of Agriculture may require these MFH borrowers to provide tenants with information on select applicable emergency funding sources. This requirement is a direct result of the COVID–19 pandemic where some U.S. households faced housing insecurity due to job loss and a preexisting affordable housing crisis. During this time, the Federal Government and State, territorial, Tribal, and local governments began efforts to provide support for affected families, with emergency financial assistance. MFH mailed letters in March 2021 to all MFH Direct Loan program borrowers and tenants regarding the Emergency Rental Assistance program through the Department of the Treasury. This ensured that all tenants had access to the information to apply to the program, if needed. However, the direct mailing was costly and possibly delayed the dissemination of vital financial assistance to some tenants facing eviction due to nonpayment of rent during the COVID–19 pandemic. As a result of this rulemaking, MFH borrowers will be required to provide this written notification in accessible formats, including translations for tenants with Limited English Proficiency, as through current MFH lease requirements. This rule requires borrowers to provide tenants written notification of eviction, including translations for tenants with limited English proficiency. Section 504 of the Rehabilitation Act of 1973 also requires recipients of Federal financial assistance to ensure that communications with people with disabilities are as effective as communications with others. Borrowers thus may have additional obligations outside this rulemaking to ensure that notification of eviction is provided to borrowers with disabilities in accessible formats.

III. Scope

This final rule conforms the regulatory lease requirement to the new statutory requirement in place since the CARES Act was signed into law on March 27, 2020. This also aligns the MFH Direct Loan programs with the Department of Housing and Urban Development's best practices and enables the Secretary of Agriculture and MFH programs to be more responsive to economic conditions and housing stability.

Tenants in MFH housing are primarily low income, with annual household incomes for households in Section 515 averaging $14,941 and in Section 514/516 Farm Labor Housing averaging $29,683 in total adjusted income.[1] This final rule amends § 3560.158, ''Changes in tenant eligibility,'' § 3560.159, ''Termination of occupancy,'' and § 3560.160, ''Tenant grievances'' to ensure that tenants in the Section 515, 514 and 516 MFH properties are afforded, at minimum, 30-days' notice to have the opportunity to recertify for change in income and clarify the total amount of rent due before an eviction for nonpayment of rent commences.

Most MFH Section 515 and 514 borrowers and Section 516 grantees, through their corresponding property management companies, already provide written notice of nonpayment of rent violations to tenant households at least 30 days in advance of eviction proceedings. This statutory requirement has been in place since the enactment of the CARES Act in March 2020, and is not limited to periods of national emergency. RHS allows 18 months after publication of this rule to expressly incorporate the 30-day notice requirement into Section 515, 514 and 516 leases through a provision or addendum. This will allow borrowers to revise all current leases as they are renewed on an annual basis. However, in the interim, borrowers and property management companies must continue to comply with the statutory requirement to provide written notice at least 30 days in advance of eviction proceedings. This required 30-day notice provides the opportunity for eligible MFH tenants to report changes in income through income recertification. Within 30 days of this rule's publication in the **Federal Register**, all 30-day notices will be required to provide tenants with the date and past due amount by which the tenant must pay to avoid the filing of an eviction action in state court against the tenant's household.

The requirement to include information from the Secretary, provided to the borrower through RHS, during a presidentially declared national emergency would take effect only during the associated national emergency period. Immediate action to disseminate this information is necessary to ensure that any funding available during national emergencies reaches its intended beneficiaries before the initiation of evictions for nonpayment of rent. This final rule directly aligns with the Department of Housing and Urban Development's interim final rule, ''Extension of Time and Required Disclosures for Notification of Nonpayment of Rent,'' published October 7, 2021 (86 FR 55693).

IV. Summary of Rule Changes

Listed below is a summary of changes to the 7 CFR part 3560, subpart D. For compliance dates, please refer to the **DATES** section in this document.

§ 3560.156 Lease Requirements

In this section, this final rule adds a new sentence to paragraph (c)(18)(xvi) to specify that the procedures to be followed in giving notices required under terms of the lease, including lease violation notices, provide that, in cases of nonpayment of rent, the termination notice will be effective no earlier than 30 days after the tenant's receipt of the written termination notice.

§ 3560.159 Termination of Occupancy

In this section, this final rule adds new paragraph (a)(3) to require that all notices of lease termination due to a tenant's failure to pay rent must also include instructions on how the tenant can cure the nonpayment of rent violation, and information on how the tenant can recertify their income. This

[1] 2022 Multi-Family Housing Annual Fair Housing Occupancy Report *https://www.rd.usda.gov/sites/default/files/RDUL-MFH_Occupancy_Report.pdf.*

section also adds that MFH Section 515 and 514 borrowers and Section 516 grantees may be required to issue information as provided by the Secretary of Agriculture during a presidential declaration of a public health emergency. This may include but not be limited to Agency-issued information on funding available to tenants through Federal programs aimed at preventing eviction.

§ 3560.160 Tenant Grievances

In this section, this final rule revises paragraph (c) to reorganize the text, clarify the responsibilities of a borrow or grantee with respect to tenants with limited English proficiency, and add new language to require that, in the event of a public health emergency, the borrower or grantee must provide tenants with the Agency-provided information described in § 3560.159.

Regulatory Information

Statutory Authority

The Rural Rental Housing program is authorized under Section 514, 515 and 516 of Title V of the Housing Act of 1949 as amended, 42 U.S.C. 1480 and implemented by 7 CFR 3560. The 30-Day Notification requirement was imposed by the Coronavirus Aid, Relief, and Economic Security Act, 2020, Public Law 116–136, 15 U.S.C. 9001 *et seq.*

Administrative Procedure Act

The Agency is issuing this final rule without advance rulemaking or public comment. RHS Multi-Family housing regulations are exempt from the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(2). The regulations at 7 CFR part 3560 implement the affordable housing loan and grant program established pursuant to Title V of the Housing Act of 1949, 42 U.S.C. 1471 *et seq.* Rules and regulations relating to occupancy in RHS-funded multi-family projects, such as this 30-day notice requirement, are necessary to support the Agency's statutory requirement to provide affordable housing through the Section 515 and Section 514 loan programs and the Section 516 grant program.

When implementing the Housing Act of 1949, USDA is governed by the notice and comment requirements of Section 534 of that Act. However, this rule implements a requirement of the CARES Act, not the Act. There is no rulemaking provision in the CARES Act that would govern the method of issuing or implementing a rule pursuant to that statute. Accordingly, there is no notice and comment requirement applicable to this rule.

Severability

It is USDA's intention that the provisions of this final rule shall operate independently of each other. In the event that this final rule or any portion of this final rule is ultimately declared invalid or stayed as to a particular provision, it is USDA's intent that the rule nonetheless be severable and remain valid with respect to those provisions not affected by a declaration of invalidity or stayed, which could continue to function sensibly. USDA concludes it would separately adopt all of the provisions contained in this final rule.

Executive Order 12372—Intergovernmental Review of Federal Programs

Section 515 and Section 514 Direct Loans and Section 516 Grants are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials to foster the intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development.

Applicants for the Direct Multi-Family Housing Loan and Grant program are required to contact their state's Single Point of Contact (SPOC) to submit their Statement of Activities and find out more information on how to comply with the state's process under Executive Order 12372. To locate a SPOC for your state, the Office of Management and Budget (OMB) has an official SPOC list on their website at *https://www.whitehouse.gov/wp-content/uploads/2023/06/SPOC-list-as-of-2023.pdf.* For those States that have a home page for their designated SPOC, a direct link has been provided by clicking on the State name. SPOC information is also available in any RD Agency office or on the RD Agency's website.

States that are not listed on the OMB website page have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within a State that does not have a SPOC, you may send application materials directly to the Federal RD awarding agency.

RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

Executive Order 12866—Regulatory Planning and Review

This final rule has been determined to be a ''significant regulatory action'' under Executive Order 12866 and accordingly, the rule has been reviewed by the OMB. A regulatory impact analysis (RIA) was completed, outlining the costs and benefits of implementing this program in rural America.

As detailed in the RIA, this final rule could mitigate eviction-related costs by giving MFH Section 515, 514 and 516 households a minimum of 30 days' notice with actionable information on recertifying income changes and deadlines for property debt payments before lease termination.

This final rule will not affect MFH borrowers directly, as the provision for a minimum of 30 days' notice before eviction for nonpayment of rent is already in place through CARES Act requirements and other state and national required postponements of eviction, which effectively negate any effects of this rule on its own mandate.

The additional requirement for MFH borrowers to disseminate information provided by the Secretary of Agriculture will allow tenants to apply for and possibly receive applicable Federal emergency rental subsidy that may be available in presidentially declared national emergencies. The cost of obtaining information to be disseminated upon presidentially declared national emergency would be minimal since RHS would supply the information to MFH borrowers and property management companies. The incremental cost of adding the supplied information from RHS is also expected to be minimal. Many MFH borrowers and associated management agents, would provide tenants with information on seeking additional emergency rent subsidy without being required to do so. For those pro-active borrowers and management agents, the rule would not impose additional administrative costs. If, however, a borrower does not already practice this type of tenant outreach, then the added administrative hurdle would impose a minimal burden.

All MFH borrowers are expected to incur other costs from this rule including familiarization and miscellaneous administrative costs for minor additional paperwork. This category of cost is expected to be small when compared to other economic effects already in place for this rule. This rule does not require housing providers to rewrite lease agreements, only to amend the requirement for 30-day minimum notice for nonpayment of

rent or add an addendum to current leases.

To view the complete RIA, please see the rulemaking docket at *https://www.regulations.gov* using docket number RHS–23–MFH–0022.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988. Under this rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing a lawsuit in Federal court that challenges action taken under this rule.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on States, on the relationship between the National Government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that 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.

RHS has determined that this rule does not have substantial direct effects on one or more Tribes. Should a tribe request consultation, RHS will work with the USDA Office of Tribal Relations to ensure that meaningful consultation occurs on provisions.

Unfunded Mandates Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal Governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal Governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies and Procedures''). The Agency has determined that: (1) this action meets the criteria established in 7 CFR 1970.53(f); (2) no extraordinary circumstances exist; and (3) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will not directly affect the approximately 11,700 MFH borrowers, most of which are small entities, as the provision for a minimum of 30 days' notice before eviction for nonpayment of rent is already in place through CARES Act requirements and other state and national required postponements of eviction, which effectively negate any effects of this rule on its own mandate. Other provisions of this final rule require minor action on the MFH Borrowers, having costs consistent with the usual course of property and tenant management. MFH currently requires a 30-day notification of eviction for nonpayment of rent. This final rule could mitigate eviction-related costs by giving MFH Section 515, 514 and 516 households a minimum of 30 days' notice with actionable information on recertifying income changes and deadlines for property debt payments before lease termination. To view the complete Regulatory Impact Analysis (RIA) outlining the costs and benefits, please see the rulemaking docket at *https://www.regulations.gov* using docket number RHS–23–MFH–0022.

Assistance Listing

The program affected by this regulation is listed in the Assistance Listing Catalog (formerly Catalog of Federal Domestic Assistance) under numbers 10.415—Rural Rental Housing Loans and 10.405—Farm Labor Housing Loans and Grants.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0189. This final rule contains no new reporting and recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

RHS is committed to complying with the E-Government Act by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information, services, and other purposes.

Non-Discrimination Statement Policy

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in, or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age,

marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Recipients of Federal financial assistance must take reasonable steps to ensure meaningful access to their programs or activities to individuals with limited English proficiency and may need to provide program information in languages other than English.

Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, staff office, or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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List of Subjects in 7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Conflict of interest, Government property management, Grant programs—housing and community development, Insurance, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate-income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, the Rural Housing Service amends 7 CFR part 3560 as follows:

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart D—Multi-Family Housing Occupancy

* * * * *

■ 2. Amend § 3560.156 by revising paragraph (c)(18)(xvi) to read as follows:

§ 3560.156 Lease requirements.

* * * * *

(c) * * *

(18) * * *

(xvi) The procedures that must be followed by the borrower and the tenant in giving notices required under terms of the lease, including lease violation notices. The lease will provide that, in cases of nonpayment of rent, the termination notice will be effective no earlier than 30 days after the tenant's receipt of the written termination notice.

* * * * *

■ 3. Amend § 3560.159 by adding paragraph (a)(3) to read as follows:

§ 3560.159 Termination of occupancy.

* * * * *

(a) * * *

(3) In cases of nonpayment of rent, the termination notice will be effective no earlier than 30 days after the tenant's receipt of the written termination notice. Notice will be provided in accordance with § 3560.160(e) of this chapter. All notices of lease termination required by this section due to a tenant's failure to pay rent must also include the following:

(i) Instructions on how the tenant can cure the nonpayment of rent violation;

(ii) Information on how the tenant can recertify their income pursuant to 7 CFR 3560.152; and

(iii) In the event of a presidential declaration of a national emergency, such information as required by the Secretary.

* * * * *

■ 4. Amend § 3560.160 by revising paragraph (c) to read as follows:

§ 3560.160 Tenant grievances.

* * * * *

(c) *Borrower responsibilities.*

(1) Borrowers must permanently post tenant grievance procedures that meet the requirements of this section in a conspicuous place at the housing project. Borrowers also must maintain copies of the tenant grievance procedures at the housing project's management office for inspection by the tenants and the Agency upon request.

(2) Each tenant must receive an Agency summary of tenant's rights when a lease agreement is signed.

(3) If a tenant has limited English proficiency (LEP), the borrower must provide grievance procedures in both English and the primary language of the person with LEP(s). The notice must include the telephone number and address of USDA's Office of Civil Rights and the appropriate Regional Fair Housing and Enforcement Agency.

(4) If the Secretary determines that all tenants must be provided with information regarding funding that is available due to a presidential declaration of a public health emergency, the Borrower must provide information to all tenants as stated in § 3560.159(a)(3)(iii) of this chapter.

* * * * *

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2024–06245 Filed 3–22–24; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2024–0449; Special Conditions No. 25–860–SC]

Special Conditions: Airbus SAS Model A350 Series Airplanes; Seats With Inertia Locking Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus SAS (Airbus) Model A350 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the applicable airworthiness standards. This design feature is seats with inertia locking devices (ILD). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Airbus on March 25, 2024. Send comments on or before May 9, 2024.

ADDRESSES: Send comments identified by Docket No. FAA–2024–0449 using any of the following methods:

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

FOR FURTHER INFORMATION CONTACT: Dan Jacquet, Cabin Safety Section, AIR–624, Technical Policy Branch, Policy & Standards Division, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, telephone 206–231–3208, email *Daniel.Jacquet@faa.gov.*

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

Privacy

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will post all comments received without change to *www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information

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

Comments Invited

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

The FAA will consider all comments received by the closing date for comments, and will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these special conditions based on the comments received.

Background

On August 16, 2022, Airbus applied for an amendment to Type Certificate No. T000631B for seats with ILD in the Model A350 series airplanes. These airplanes are twin-engine, transport-category airplanes, with a maximum seating for 480 passengers, and a maximum take-off weight of 623,908 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus must show that the Airbus Model A350 series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. T000631B, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A350 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A350 series airplanes must comply with the exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Model A350 series airplanes will incorporate the following novel or unusual design features:

Seats with inertia locking devices.

Discussion

Airbus will install, in Model A350 series airplanes, passenger seats that can be translated in the fore and aft direction by an electrically powered motor (actuator) that is attached to the seat primary structure. Under typical service-loading conditions, the motor internal brake is able to translate the seat and hold the seat in the translated position. However, under the inertial loads of emergency-landing and loading conditions, specified in § 25.562, the motor internal brake may not be able to maintain the seat in the required position. The ILD is an ''active'' device intended to control seat movement (*i.e.,* a system that mechanically deploys during an impact event), by locking the gears of the motor assembly in place. The ILD mechanism is activated by the higher inertial load factors that could occur during an emergency landing event. Each seat place incorporates two ILDs, one on either side of the seat pan. Only one ILD is required to hold an

occupied seat in position during worst-case dynamic loading specified in § 25.562.

The ILD will self-activate only in the event of a predetermined airplane loading condition such as that occurring during crash or emergency landing and will prevent excessive seat forward translation. A minimum level of protection must be provided if the seat-locking device does not deploy.

The normal means of satisfying the structural and occupant protection requirements of § 25.562 result in a non-quantified, but nominally predictable, progressive structural deformation or reduction of injury severity for impact conditions less than the maximum specified by the rule. A seat using ILD technology, however, may involve a step change in protection for impacts below and above that at which the ILD activates and deploys to retain the seat pan in place. This could result in structural deformation or occupant injury being higher at an intermediate impact condition than that resulting from the maximum impact condition. It is acceptable for such step-change characteristics to exist, provided the resulting output does not exceed the maximum allowable criteria at any condition at which the ILD does or does not deploy, up to the maximum severity pulse specified by the requirements.

The ideal triangular maximum severity pulse is defined in Advisory Circular (AC) 25.561–1B ''Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes''. For the evaluation and testing of less-severe pulses for purposes of assessing the effectiveness of the ILD deployment setting, a similar triangular pulse should be used with acceleration, rise time, and velocity change scaled accordingly. The magnitude of the required pulse should not deviate below the ideal pulse by more than 0.5g until 1.33 t1 is reached, where t1 represents the time interval between 0 and t1 on the referenced pulse shape as shown in AC 25.561–1B. This is an acceptable method of compliance to the test requirements of the special conditions.

Conditions 1 through 5 ensure that the ILD activates when intended, to provide the necessary protection of occupants. This includes protection of a range of occupants under various accident conditions. Conditions 6 through 10 address maintenance and reliability of the ILD, including any outside influences on the mechanism, to ensure it functions as intended.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A350 series airplanes. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus SAS Model A350 series airplanes.

In addition to the requirements of § 25.562, passenger seats incorporating inertia locking devices (ILD)s must meet the following:

1. Level of Protection Provided by ILD—It must be demonstrated by test that the seats and attachments, when subject to the emergency-landing dynamic conditions specified in § 25.562, and with one ILD not deployed, do not experience structural failure that could result in:

a. Separation of the seat from the airplane floor.

b. Separation of any part of the seat that could form a hazard to the seat occupant or any other airplane occupant.

c. Failure of the occupant restraint or any other condition that could result in the occupant separating from the seat.

2. Protection Provided Below and Above the ILD Actuation Condition—If step-change effects on occupant protection exist for impacts below and above that at which the ILD deploys, tests must be performed to demonstrate that the occupant is shown to be protected at any condition at which the ILD does or does not deploy, up to the maximum severity pulse specified by § 25.562. Test conditions must take into account any necessary tolerances for deployment.

3. Protection Over a Range of Crash Pulse Vectors—The ILD must be shown to function as intended for all test vectors specified in § 25.562.

4. Protection During Secondary Impacts—The ILD activation setting must be demonstrated to maximize the probability of the protection being available when needed, considering a secondary impact that is above the severity at which the device is intended to deploy up to the impact loading required by § 25.562.

5. Protection of Occupants other than 50th Percentile—Protection of occupants for a range of stature from a two-year-old child to a ninety-five-percentile male must be shown.

6. Inadvertent Operation—It must be shown that any inadvertent operation of the ILD does not affect the performance of the device during a subsequent emergency landing.

7. Installation Protection—It must be shown that the ILD installation is protected from contamination and interference from foreign objects.

8. Reliability—The performance of the ILD must not be altered by the effects of wear, manufacturing tolerances, aging, or drying of lubricants, and corrosion.

9. Maintenance and Functional Checks—The design, installation, and operation of the ILD must be such that it is possible to functionally check the device in place. Additionally, a functional-check method and a maintenance-check interval must be included in the seat installer's instructions for continued airworthiness (ICA) document.

10. Release Function—If a means exists to release an inadvertently activated ILD, the release means must not introduce additional hidden failures that would prevent the ILD from functioning properly.

Issued in Kansas City, Missouri, on March 19, 2024.

James David Foltz,

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

[FR Doc. 2024–06196 Filed 3–22–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 12223]

RIN 1400–AF27

International Traffic in Arms Regulations: Revision to U.S. Munitions List Category XI—High-Energy Storage Capacitors

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (the Department) published an interim final rule on April 27, 2023, effective May 21, 2023, amending the International Traffic in Arms Regulations (ITAR) to remove from U.S. Munitions List (USML) Category XI certain high-energy storage capacitors and to clearly identify the high-energy storage capacitors that remain in USML Category XI. After reviewing the comments received in response to that interim final rule, the Department is now further amending USML Category XI to remove additional high-energy storage capacitors and to more clearly identify those that remain in USML Category XI.

DATES: *Effective date:* April 24, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rasmussen, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2217; email *DDTCCustomerService@state.gov* SUBJECT: ITAR Amendment—High-Energy Storage Capacitors (RIN 1400–AF27)

SUPPLEMENTARY INFORMATION: The Department of State's Directorate of Defense Trade Controls (DDTC) administers the ITAR (22 CFR parts 120 through 130) to regulate the export, reexport, retransfer, and temporary import of, and brokering activities related to certain items and services. The articles and information subject to the jurisdiction of the Department of State under the ITAR (*i.e.,* ''defense articles'') are identified on the USML at ITAR section 121.1. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other department or agency of the U.S. Government are subject to the Export Administration Regulations (EAR, 15 CFR parts 730 through 774, which includes the Commerce Control List (CCL) in Supplement No. 1 to part 774). The EAR is administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. This rule does not modify the list of defense articles and defense services controlled for purposes of permanent import by the Attorney General, as enumerated on the U.S. Munitions Import List at 27 CFR part 447.

The Department seeks to control on the USML those articles and services that provide a critical military or intelligence advantage, or, in the case of weapons, have an inherently military function. The Department undertakes these revisions pursuant to the discretionary statutory authority afforded the President in section 38(a)(1) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(a)(1)) and delegated to the Secretary of State in Executive Order 13637, to control the export and temporary import of defense articles and defense services in furtherance of world peace and the security and foreign policy of the United States, and to designate those items which constitute the USML. The Department, informed by comments received from the public and consultations with its interagency partners, determined the articles removed from the USML by this rule no longer warrant control under the ITAR.

On April 27, 2023, the Department published an interim final rule at 88 FR 25488, with an effective date of May 21, 2023 (the interim final rule), to remove from USML Category XI certain high-energy storage capacitors that it assessed have broad commercial application, are available internationally, and do not provide a critical military or intelligence advantage. Specifically, the interim final rule added a voltage criterion to paragraph (c)(5) of USML Category XI, limiting that paragraph to capacitors ''capable of operating at greater than one hundred twenty-five volts (125 V).''

In the interim final rule, the Department requested comments from the interested community, focusing on certain questions about the new voltage criterion. The Department now responds to those comments and further amends the ITAR, and more specifically the USML, through this final rule.

Voltage Rating and ''Capable of Operating''

The Department received four comments from the public, all of which recommended that the Department define the voltage criterion according to ''voltage rating'' or ''rated voltage,'' rather than ''capable of operating.'' One commenter asserted that ''voltage rating'' is the industry standard term and noted that the use of ''voltage rating'' would provide consistency with the way that capacitor voltages are specified on the CCL under Export Control Classification Numbers (ECCNs) 3A001.e.2 and 3A201.a. Two other commenters asserted that ''rated voltage'' is the industry standard term, and one cited the Electronic Components Industry Association (ECIA) definition of ''rated voltage'' as ''the voltage at which an electrical component can operate for extended periods without loss of its basic properties.'' Another commenter recommended ''voltage rating'' but also suggested the term ''steady state voltage rating.'' The Department affirms that the voltage criterion should not be conflated with transient, or surge, voltage ratings.

All commenters opposed the use of the phrase ''capable of operating'' to specify the voltage threshold, asserting that ''capable of operating'' is unclear because it does not reflect terminology widely used in the electronics industry and most capacitors are ''capable of operating'' for a limited time in conditions for which they were not designed, although they may incur damage in doing so. One commenter further asserted that it is inherently unclear whether a voltage criterion defined in terms of ''capable of operating'' would vary based upon a customer's circuit design margins and the application into which the capacitor is integrated. In contrast, industry practitioners already understand that ''rated voltage'' and ''voltage rating'' apply to the capacitor itself, and do not depend on end use. The Department affirms its intent is to regulate such capacitors based on their performance capability, regardless of limitations imposed by the circuit in which they are currently installed.

The Department accepts these comments and will implement the term ''rated voltage'' to specify the voltage criterion in place of the phrase ''capable of operating,'' which does not have a broadly accepted definition. The Department notes that rated voltage is commonly provided in manufacturers' product literature worldwide, thereby giving persons other than the manufacturer valuable information in assessing the capabilities of the capacitors. Furthermore, one commenter asserted that the maximum voltage a capacitor can withstand is not generally assessed during product development, which focuses upon the recommended operating conditions and the limit provided in the specification. Thus, a criterion specified in terms of ''capable of operating'' may require manufacturers to expend resources to perform testing that they would not otherwise conduct.

Accordingly, the Department has decided to specify the voltage criterion in paragraph (c)(5)(i) of USML Category XI in terms of ''rated voltage.''

Definition of Rated Voltage

The interim final rule also asked whether a sufficient definition of ''voltage rating'' would be ''the value, based on the capacitor's design, testing, and evaluation, that describes the maximum amount of continuous voltage that will not damage the capacitor.'' All commenters assessed that this definition was accurate, with one recommending adding an operating duration, temperature, and maximum failure rate to ensure consistency across manufacturers and to prevent manufacturers from, for example, increasing the temperature to claim a lower rated voltage.

One commenter suggested including a note clarifying that rated voltage does not include short-term transient or surge operating conditions. Another commenter assessed that adding a temperature criterion ''would complicate the verbiage'' of paragraph (c)(5), but it suggested that if a temperature criterion is added, the Department should use the term ''rated temperature,'' where rated temperature is ''the maximum temperature at which a capacitor can be used without voltage derating (or degradation).'' Another commenter simply explained that manufacturers rate their capacitors at different temperatures according to the intended end use application.

The interim final rule additionally asked whether a criterion such as ''will not reduce the capacitor's full energy life below 10,000 discharges'' would address the fact that each charge and discharge cycle likely inflicts some damage on a capacitor. Commenters did not support this suggestion, finding the criterion itself or the suggested discharge threshold irrelevant to their capacitors.

Based on this feedback, the Department is amending the Note to paragraph (c)(5) of Category XI to define ''rated voltage'' as ''the value, based on the capacitor's design, testing, and evaluation, that describes the maximum amount of continuous voltage that will not damage the capacitor.'' The Department also adds a sentence clarifying that rated voltage does not include short-term transient or surge operating conditions. Furthermore, the Department clarifies that ''rated voltage'' shall be assessed for this criterion at an operating temperature of 85 degrees Celsius (°C) or less. This clarification is intended to ensure consistency across manufacturers in evaluating the threshold. Since capacitor voltage ratings lower as temperatures rise, voltage ratings below 500 V at temperatures at or below 85 °C may be utilized to assess the voltage criterion, as may voltage ratings above 500 V at temperatures above 85 °C; however, voltage ratings below 500 V at temperatures above 85 °C must be temperature corrected to 85 °C or lower to assess the voltage criterion.

Voltage Threshold

One commenter reported that wet tantalum capacitors with a rated voltage of 150 V are being developed for use in commercial applications. The commenter also asserted that some medical applications, such as defibrillators, use wet tantalum capacitors with a voltage rating at or above 250 V.

The Department determined it is appropriate to raise the voltage threshold in excess of a rated voltage of 500 V. The Department assesses that continuing to use the greater than 125 V threshold from the interim final rule would result in unnecessary controls on capacitors utilized in commercial applications that are comparable to those available internationally without multilateral export control restrictions. Moreover, the Department recognizes that the rated voltage of such capacitors is likely to increase over time. Most significantly, during its review, the Department did not identify any capacitors with a rated voltage of 500 V or less that continue to provide a critical military or intelligence advantage such that they continue to warrant control on the USML.

Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking is exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(1) as a military or foreign affairs function of the United States. However, the Department elected to solicit comments on an interim final rule and has responded to those comments in this final rule without prejudice to its determination that controlling the export and temporary import of defense articles and services is a military or foreign affairs function.

Regulatory Flexibility Act

Since this rule is exempt from the notice-and-comment rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Department assesses that this rule is not a major rule under the criteria of 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866, 13563, and 14094

Executive Orders 12866 (as amended by Executive Order 14094) and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been deemed a ''significant regulatory action'' under Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports.

For the reasons stated in the preamble, the Department of State amends Title 22, Chapter I, Subchapter M, part 121 as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

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

Authority: 22 U.S.C. 2752, 2778, 2797; 22 U.S.C. 2651a; Sec. 1514, Pub. L. 105–261, 112 Stat. 2175; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 2. In § 121.1, under Category XI, revise paragraph (c)(5) as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category XI—Military Electronics

* * * * *

(c) * * *

(5) High-energy storage capacitors that:

(i) Have a rated voltage of greater than five hundred volts (500 V);

(ii) Have a repetition rate greater than or equal to six (6) discharges per minute;

(iii) Have a full energy life greater than or equal to 10,000 discharges at greater than 0.2 Amps per Joule peak current; and

(iv) Have any of the following:

(A) Volumetric energy density greater than or equal to 1.5 J/cc; or

(B) Mass energy density greater than or equal to 1.3 kJ/kg;

Note to paragraph (c)(5): *Volumetric energy density* is Energy per unit Volume. *Mass energy density* is Energy per unit Mass, sometimes referred to as *Gravimetric energy density* or *Specific energy. Energy* ($E = \frac{1}{2}CV^2$, where C is Capacitance and V is the rated voltage) in these calculations must not be confused with useful energy or extractable energy. *Rated voltage* is the value, based on the capacitor's design, testing, and evaluation, that describes the maximum amount of continuous voltage, at an operating temperature less than or equal to 85 degrees Celsius (85 °C), that will not damage the capacitor. *Rated voltage* does not include short-term transient or surge operating conditions.

* * * * *

Bonnie D. Jenkins,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2024–06199 Filed 3–22–24; 8:45 am]

BILLING CODE 4710–25–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[WT Docket No. 19–348; DA 24–233; FRS 209028]

Facilitating Shared Use in the 3100–3550 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireless Telecommunication Bureau and the Office of Engineering and Technology (WTB/OET) make a non-substantive, editorial revision to the Table of Frequency Allocations in the Commission's Rules (Table 22), which identifies coordinates for Department of Defense Cooperative Planning Areas (CPAs) and Periodic Use Areas (PUAs), deleting as redundant, the Norfolk, Virginia Cooperative Planning Area (Norfolk CPA) from the list of CPAs and PUA's in Table 22.

DATES: Effective March 25, 2024.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Reed, Wireless Telecommunications Bureau, Mobility Division, (202) 418–0531 or *Thomas.reed@fcc.gov.* For information regarding the PRA information collection requirements, contact Cathy Williams, Office of Managing Director, at 202–418–2918 or *cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Wireless Telecommunications Bureau and the Office of Engineering and Technology's Order in WT Docket No. 19–348, DA 24–233, adopted and released March 11, 2024. The full text of the Order, including all Appendices, is available for public inspection at the following internet address: *https://docs.fcc.gov/public/attachments/DA-24-233A1.pdf.* Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Synopsis

Introduction

In this Order, WTB/OET make a non-substantive, editorial revision to § 2.106(c)(431), Table 22. Consistent with the recommendation of the Department of Defense (DoD), WTB/OET revise § 2.106(c)(431), Table 22, of the Commission's rules to delete the Norfolk CPA from the list of CPAs and PUAs in Table 22 as redundant because the Norfolk CPA is entirely encompassed within the larger Newport News, Virginia CPA/PUA. As part of this change, and consistent with DoD's request, WTB/OET also rename the Newport News CPA/PUA as the ''Newport News-Norfolk CPA/PUA.''

Background

Historically, the 3.45 GHz band (3450–3550 MHz) was a predominantly Federal band, with limited non-Federal use, and DoD in particular operated a number of defense radar systems in the band. In 2020, the Commission adopted the 3.45 GHz R&O and FNPRM, in which it removed secondary, non-Federal allocations from the band and sought comment on restructuring the band to permit coordinated Federal and non-Federal use. In 2021, the Commission adopted the 3.45 GHz Second R&O, which created a new 3.45 GHz Service, including a cooperative sharing regime. Under this sharing regime, non-Federal systems have unencumbered, full-power use of the entire band across the contiguous United States except for limited locations and circumstances—in effect, within CPAs and PUAs, where current incumbent Federal systems remain in the band and non-Federal systems are not entitled to protection from Federal operations.

Commercial operations are not precluded in CPAs and PUAs, but prior coordination between Federal incumbents and commercial operations is required. Consistent with DoD's recommendation, the Commission defined CPAs as ''geographic locations in which non-Federal operations shall coordinate with Federal systems in the band to deploy non-Federal operations in a manner that shall not cause harmful interference to Federal systems operating in the band.'' In CPAs, operators of non-Federal stations may be required to modify their operations to protect Federal operations against harmful interference and may not claim interference protection from Federal systems. For each CPA, the Commission

provided either a point and radius or a series of geographic coordinates (creating a polygon) to define the boundary of the area, which allows non-Federal operators to determine precisely which areas require coordination with DoD. DoD also identified several PUAs, which, consistent with DoD's recommendation, the Commission defined as ''geographic locations in which non-Federal operations in the band shall not cause harmful interference to Federal systems operating in the band for episodic periods.'' To enable non-Federal licensees to determine the areas that require coordination with DoD, the center locations and dimensions for all CPA and PUA coordination areas are defined in § 2.106(c)(431) of the Commission's rules.

In the 3.45 GHz Band Second R&O, the Commission expressly delegated authority to WTB and OET to reduce the size of CPAs and PUAs. The Commission provided that ''in the event that the DoD modifies its use in any existing Cooperative Planning or Periodic Use Area so as to decrease the size of such area, we delegate authority to [WTB/OET], in coordination with NTIA, to reflect such smaller areas in our rules.'' In addition to this specific delegation, the Commission broadly delegated additional authority to WTB and OET to create additional CPAs and PUAs as necessary to facilitate commercial network expansion into areas outside the contiguous United States when NTIA provides notice that non-Federal operations can occur, to consider applications and assign licenses for partial economic areas associated with such CPAs/PUAs, and to conduct a rulemaking if it became necessary to authorize non-Federal operations to these new license areas on the basis of rules that differ from the rules adopted in the 3.45 GHz Band Second R&O. In addition, OET has delegated authority to make non-substantive, editorial revisions to Part 2 of the Commission's rules.

In a Memorandum to the National Telecommunications and Information Administration (NTIA), DoD requests the deletion of the Norfolk CPA from the list of CPAs and PUAs in § 2.106(c)(431), Table 22 of the Commission's rules. DoD maintains that the Norfolk CPA is redundant because the Norfolk CPA is entirely encompassed within the larger Newport News, VA CPA/PUA. As part of this change, DoD also asks that the Newport News CPA/PUA be renamed the ''Newport News-Norfolk CPA/PUA.''

Discussion

Pursuant to the delegation of authority by the Commission in the 3.45 GHz Band Second R&O, as well as OET's authority to make non-substantive revisions to the Part 2 rules, WTB/OET revise the Part 2 rules to delete the redundant Norfolk CPA as requested by DoD and rename the Newport News CPA/PUA as the ''Newport News-Norfolk CPA/PUA.'' For the reasons discussed below, we find that this modification falls within the ''good cause'' exception to the notice and comment requirements of the Administrative Procedure Act.

As a practical matter—and as DoD points out—the Norfolk CPA is entirely subsumed in the larger Newport News CPA/PUA, and any non-Federal operations in the former CPA would be required to follow the same coordination procedures after such a change as those required pursuant to the current rule. The larger area also includes the same responsibility for PUA coordination, which currently applies to the entire region, so no protections or coordination requirements will be lost or changed as a result of this rule modification. The only change resulting from this rule modification is that Federal and non-Federal operators will no longer have to conduct a duplicative coordination process but will instead be able to follow a single coordination procedure for the entire, encompassing area. Thus, while the Newport News CPA/PUA will not decrease in size, the elimination of the Norfolk CPA will have the effect of eliminating a duplicative coordination burden for both Federal and non-Federal operations, and as such, falls within the authority delegated to WTB/OET.

As discussed above, the change proposed by DoD, and conveyed through NTIA, merely deletes a redundant component of the rule, would not alter the compliance obligations of any party, and seeking notice and comment on this technical correction would be a waste of Commission resources. ''The larger Newport News CPA/PUA commands the requisite coordination to protect DoD missions operating within the band, to include episodic DoD operations[,]'' rendering the Norfolk CPA redundant and unnecessary. Accordingly, without notice and comment, WTB/OET delete the Norfolk CPA from § 2.106(c)(431), Table 22, and rename the Newport News CPA/PUA, the ''Newport News-Norfolk CPA/PUA.''

Procedural Matters

Regulatory Flexibility Act. Because this rule change is being adopted without notice and comment, the Regulatory Flexibility Act does not apply.

Paperwork Reduction Act. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Office of the Managing Director will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

It is ordered, pursuant to sections 1, 4(i), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, that this Order *is adopted.*

It is further ordered that part 2 of the Commission's rules is *amended* as set forth in the Appendix, effective immediately upon publication in the **Federal Register**.

It is further ordered that the Office of the Managing Director, Performance Program Management, *shall send* a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

These actions are taken under delegated authority pursuant to sections 0.31, 0.131, 0.241, and 0.331 of the Commission's rules, 47 CFR 0.31, 0.131, 0.241, and 0.331, and the 3.45 GHz Band Second R&O.

Federal Communications Commission.

Amy Brett,

Chief of Staff, Wireless Telecommunications Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 2 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. In § 2.106, revise Table 22 by removing the Norfolk CPA and renaming as the ''Newport News-Norfolk CPA/PUA.'' The revision reads as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

(c) * * *

(431) * * *

TABLE 22 TO PARAGRAPH (c)(431)—DEPARTMENT OF DEFENSE COOPERATIVE PLANNING AREAS AND PERIODIC USE AREAS

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
* * *	*		*	*	*	
Newport News-Norfolk* (includes Fort Story SESEF range)	VA	Yes	Yes	36°58′24″	76°26′07″	93
* * *	*		*	*	*	

[FR Doc. 2024–06158 Filed 3–22–24; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 89, No. 58
Monday, March 25, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0763; Project Identifier AD–2023–00924–E]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines, LLC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all International Aero Engines, LLC (IAE LLC) Model PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127G1A–JM, PW1127G1B–JM, PW1127G–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, and PW1133GA–JM engines. This proposed AD was prompted by an in-flight shutdown (IFSD) caused by the fracture of a low-pressure compressor (LPC) 1st-stage integrally bladed rotor (IBR–1). This proposed AD would require removal and replacement of affected LPC key washers and affected LPC IBR–1 and installation of inlet guide vane (IGV) spacers. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 9, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0763; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0763; Project Identifier AD–2023–00924–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

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

Background

On July 8, 2022, an Airbus Model A320neo airplane powered by IAE LLC Model PW1127G–JM engines experienced an IFSD. A manufacturer investigation determined that the IFSD was caused by a fractured LPC IBR–1 which resulted from an aerodynamic excitation. The most likely cause of the aerodynamic excitation was a misaligned IGV located directly upstream of the IBR–1. As a result, Pratt & Whitney (PW) redesigned the LPC IGV arm assembly by adding a spacer to provide additional torque capability and to prevent a misaligned vane. PW also redesigned the IBR–1 to better withstand an aerodynamic excitation from a misaligned IGV. As a result, the FAA is proposing to require the removal and replacement of certain affected LPC key washers and affected LPC IBR–1, and installation of LPC IGV spacers. This condition, if not addressed, could result in damage to the engine, damage to the airplane, and possible loss of the airplane.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require removal and replacement of affected LPC key washers and affected LPC IBR–1 and installation of LPC IGV spacers.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 215 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace LPC IBR–1	1 work-hours × $85 per hour = $85	$36,350	$36,435	$7,833,525
Replace IGV key washers and install IGV spacers.	20 work-hours × $85 per hour = $1,700	4,392	6,092	1,309,780

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

International Aero Engines, LLC: Docket No. FAA–2024–0763; Project Identifier AD–2023–00924–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 9, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines Model PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127G1A–JM, PW1127G1B–JM, PW1127G–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, and PW1133GA–JM engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by an in-flight shutdown caused by the fracture of a low-pressure compressor (LPC) 1st-stage integrally bladed rotor (IBR–1). The FAA is issuing this AD to prevent the failure of the LPC IBR–1. The unsafe condition, if not addressed, could result in damage to the engine, damage to the airplane, and possible loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For affected engines with installed LPC key washers having part number (P/N) 5375416, at the next engine shop visit after the effective date of this AD, remove the affected LPC key washers and replace them with LPC key washers and LPC inlet guide vane (IGV) spacers that are eligible for installation.

(2) For affected engines with an installed LPC IBR–1 having P/N 5373831, at the next piece-part exposure after the effective date of this AD, remove the affected LPC IBR–1 and replace with an LPC IBR–1 eligible for installation.

(h) Definitions

For the purposes of this AD:

(1) An ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(2) A ''piece-part exposure'' is when the LPC IBR–1 is separated from the LPC module.

(3) ''LPC key washers eligible for installation'' are any LPC key washers having P/N 5375434 or later-approved P/N.

(4) ''LPC IGV spacers eligible for installation'' are any LPC IGV spacers having P/N 5375433 or later-approved P/N.

(5) An ''LPC IBR–1 eligible for installation'' is any LPC IBR–1 having P/N 5373841 or later-approved P/N.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Additional Information

For more information about this AD, contact Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on March 19, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06216 Filed 3–22–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0755; Project Identifier AD–2023–00521–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain General Electric Company (GE) Model GEnx–1B64/P1, GEnx–1B64/P2, GEnx–1B67, GEnx–1B67/P1, GEnx–1B67/P2, GEnx–1B70, GEnx–1B70/75/P1, GEnx–1B70/75/P2, GEnx–1B70/P1, GEnx–1B70/P2, GEnx–1B70C/P1, GEnx–1B70C/P2, GEnx–1B74/75/P1, GEnx–1B74/75/P2, GEnx–1B76/P2, GEnx–1B76A/P2, GEnx–2B67, GEnx–2B67B, and GEnx–2B67/P engines. This proposed AD was prompted by a manufacturer evaluation that determined a lower life limit is necessary for certain stages 6–10 compressor rotor spools (stages 6–10 spools) than allowed by the engine shop manual (ESM). This proposed AD would require a one-time inspection of the stages 6–10 spools for previously accomplished blend repairs, a one-time inspection of the blend repairs on the stages 6–10 spools for compliance with the updated allowable limits, and replacement if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 9, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0755; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact GE, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *ge.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7178; email: *alexei.t.marqueen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0755; Project Identifier AD–2023–00521–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

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

Background

The FAA was notified of a manufacturer evaluation, which consisted of a heat transfer analysis, that revealed significant changes in thermal gradients in certain areas of the high-pressure compressor rotor (HPCR) assembly on GE Model GEnx–1B64/P1, GEnx–1B64/P2, GEnx–1B67, GEnx–1B67/P1, GEnx–1B67/P2, GEnx–1B70, GEnx–1B70/75/P1, GEnx–1B70/75/P2, GEnx–1B70/P1, GEnx–1B70/P2, GEnx–1B70C/P1, GEnx–1B70C/P2, GEnx–1B74/75/P1, GEnx–1B74/75/P2, GEnx–1B76/P2, GEnx–1B76A/P2, GEnx–2B67, GEnx–2B67B, and GEnx–2B67/P engines. The results of the heat transfer analysis were used to determine that a lower life limit is required for certain areas of the HPCR. Consequently, the manufacturer re-checked the serviceable and repairable limits of the stages 6–10 spools to determine if they still maintained the threshold limit for serviceability, where it was discovered that two repair procedures listed in the ESM exceeded the updated repair limits at certain locations of the HPCR assembly.

Due to the findings of the previous evaluations, the manufacturer performed an updated analysis and determined that a new threshold for the repairable limits for blend-repaired stages 6–10 spools is necessary. The manufacturer also determined that certain areas of previous blend-repaired stages 6–10 spools may have a lower life limit than the ultimate life limit of the HPCR disks.

This condition, if not addressed, could result in fracture and potential uncontained failure of the stages 6–10 spools, with consequent uncontained

debris release, damage to the engine, and damage to the aircraft.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE GEnx–1B Service Bulletin 72–0525, R00, dated October 4, 2023 (GEnx–1B SB 72–0525, R00), and GEnx–2B Service Bulletin 72–0460, R00, dated October 4, 2023 (GEnx–2B SB 72–0460, R00). This service information identifies the part numbers and serial numbers of affected stages 6–10 spools; and specifies instructions for a one-time inspection of the stages 6–10 spools for previously accomplished blend repairs, a one-time inspection of the blend repairs on the stages 6–10 spools for compliance with the updated allowable limits, and replacement if necessary. These documents are distinct since they apply to different engine models.

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

Proposed AD Requirements in This NPRM

This NPRM would require accomplishing a one-time inspection of the stages 6–10 spools for previously accomplished blend repairs, a one-time inspection of the blend repairs on the stages 6–10 spools for compliance with the updated allowable limits, and replacement, if necessary, within compliance times specified in GE GEnx–1B SB 72–0525, R00 or GEnx–2B SB 72–0460, R00. Depending on the part numbers and serial numbers of the affected stages 6–10 spools, this NPRM proposes to require these actions to be accomplished at the next piece-part exposure after the effective date of this proposed AD, or before the affected stages 6–10 spool reaches the cyclic removal threshold of up to 11,894 cycles since new.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 6 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect stages 6–10 spools	8 work-hours × $85 per hour = $680	$0	$680	$4,080
Inspect previous blend repairs	1 work-hours × $85 per hour = $85	0	85	510

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the proposed inspections. The agency has no way of determining the number of engines that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace stages 6–10 spool	8 work-hours × $85 per hour = $680	$1,307,600	$1,308,280

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2024–0755; Project Identifier AD–2023–00521–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 9, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) Model GEnx–1B64/P1, GEnx–1B64/P2, GEnx–1B67, GEnx–1B67/P1, GEnx–1B67/P2, GEnx–1B70, GEnx–1B70/75/P1, GEnx–1B70/75/P2, GEnx–1B70/P1, GEnx–1B70/P2, GEnx–1B70C/P1, GEnx–1B70C/P2, GEnx–1B74/75/P1, GEnx–1B74/75/P2, GEnx–1B76/P2, GEnx–1B76A/P2, GEnx–2B67, GEnx–2B67B, and GEnx–2B67/P engines with an installed:

(1) Stages 6–10 compressor rotor spool (stages 6–10 spool) having a part number (P/N) and serial number (S/N) listed in paragraph 4, Appendix—A, Table 1 of GE GEnx–1B Service Bulletin 72–0525, R00, dated October 4, 2023 (GEnx–1B SB 72–0525, R00); or

(2) Stages 6–10 spool having a P/N and S/N listed in paragraph 4, Appendix—A, Table 1 of GE GEnx–2B Service Bulletin 72–0460, R00, dated October 4, 2023 (GEnx–2B SB 72–0460, R00).

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer evaluation which determined that a lower life limit is necessary for certain stages 6–10 spools than that allowed in the engine shop manual. The FAA is issuing this AD to prevent fracture and potential uncontained failure of the stages 6–10 spools. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

At the next piece-part exposure after the effective date of this AD or before the affected stages 6–10 spool reaches the cyclic removal threshold specified in paragraph 4., Appendix—A, Table 1 of GEnx–1B 72–0525, R00 or GEnx–2B SB 72–0460, R00, as applicable, do the following actions:

(1) Inspect the stages 6–10 spool for previously accomplished blend repairs in accordance with the Accomplishment Instructions, paragraph 3.B.(1) of GEnx–1B SB 72–0525, R00 or GEnx–2B SB 72–0460, R00, as applicable.

(2) If during any inspection required by paragraph (g)(1) of this AD, any stages 6–10 spool is found to have a previously accomplished blend repair, before further flight, inspect the blend repair for compliance with the allowable limits in accordance with the Accomplishment Instructions, paragraph 3.B.(2) of GEnx–1B SB 72–0525, R00 or GEnx–2B SB 72–0460, R00, as applicable.

(3) If during any inspection required by paragraph (g)(2) of this AD, any stages 6–10 spool is found to have a previously accomplished blend repair that is not within the allowable limits, before further flight, remove the stages 6–10 spool from service and replace with a part eligible for installation in accordance with the Accomplishment Instructions, paragraph 3.B.(2)(a)1 or 3.B.(2)(b)1 of GEnx–1B SB 72–0525, R00 or GEnx–2B SB 72–0460, R00, as applicable.

(h) Definition

(1) For the purpose of this AD, a ''piece-part exposure'' is when the stages 6–10 spool is disassembled from the high-pressure compressor rotor assembly.

(2) For the purpose of this AD, a ''part eligible for installation'' is a stages 6–10 spool that does not have a P/N and S/N identified in paragraph 4, Appendix—A, Table 1 of GEnx–1B 72–0525, R00 or GEnx–2B 72–0460, R00.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7178; email: *alexei.t.marqueen@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) General Electric Company (GE) GEnx–1B Service Bulletin 72–0525, R00, dated October 4, 2023.

(ii) GE GEnx–2B Service Bulletin 72–0460, R00, dated October 4, 2023.

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on March 15, 2024.

Victor Wicklund,

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

[FR Doc. 2024–05995 Filed 3–22–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0761; Project Identifier AD–2023–01256–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This proposed AD was prompted by a determination that the nitrogen enriched air distribution system (NEADS) cover plate assembly attached to a certain vent stringer in the center wing tank was installed without a designed electrical bond. This proposed AD would require installing electrical bonding and grounding, installing the cover plate assembly with new fasteners, and revising the existing maintenance or inspection program, as applicable, to incorporate new airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 9, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0761; or in person at

Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Boulevard, MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2024–0761.

FOR FURTHER INFORMATION CONTACT: Anthony Decaro, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone: 562–627–5374; email: *Anthony.D.Decaro@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0761; Project Identifier AD–2023–01256–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Anthony Decaro, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone: 562–627–5374; email: *Anthony.D.Decaro@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating a production audit by the design approval holder found that the design of the NEADS cover plate assembly did not comply with the requirements for nitrogen generation system certification (14 CFR 25.981). It was discovered that the cover plate assembly was installed without a designed electrical bond for electrostatic dissipation. As a result, Boeing has changed the cover plate assembly installation procedure to include a new electrical bond between the cover plate assembly and vent stringer No. 15. In addition, new stainless steel alloy fasteners are used to attach the cover plate assembly to vent stringer No. 15. The accumulation of electrostatic charge in the cover plate assembly and the float valve assembly, which is attached to the cover plate assembly, could lead to electrostatic discharge to the surrounding structure. This condition, if not addressed, could result in an ignition source inside the fuel tank and subsequent fire or explosion.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 777–47A0007 RB, dated November 21, 2023. This service information specifies procedures for removing the cover plate assembly and its attached float valve assembly, installing electrical bonding and grounding, measuring the bonding resistance between the bolt heads/cover plate assembly/float valve assembly mounting flange and the vent stringer No. 15 and between the nuts and the cover plate assembly, and installing the cover plate assembly with new fasteners. The service information also requires revising the operator's maintenance or inspection program, as applicable, by incorporating new airworthiness limitations (AWLs). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *regulations.gov* under Docket No. FAA–2024–0761.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 292 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Electrical bond installation	27 work-hours × $85 per hour = $2,295	$93	$2,388	$697,296

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2024–0761; Project Identifier AD–2023–01256–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 9, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 777–47A0007 RB, dated November 21, 2023.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by a determination that the nitrogen enriched air distribution system (NEADS) cover plate assembly attached to vent stringer No. 15 in the center wing tank was installed without a designed electrical bond. The FAA is issuing this AD to address the accumulation of electrostatic charge in the cover plate assembly and float valve assembly, which could lead to electrostatic discharge to the surrounding structure. The unsafe condition, if not addressed, could result in result in an ignition source inside the fuel tank and subsequent fire or explosion.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–47A0007 RB, dated November 21, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–47A0007 RB, dated November 21, 2023.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 777–47A0007, dated November 21, 2023, which is referred to in Boeing Alert Requirements Bulletin 777–47A0007 RB, dated November 21, 2023.

(h) Exceptions to Service Information Specifications

(1) Where the ''Effectivity'' paragraph and Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–47A0007 RB, dated November 21, 2023, uses the phrase ''the Original Issue date of Requirements Bulletin 777–47A0007 RB,'' this AD requires using the effective date of this AD.

(2) Where the Compliance Time for ACTION 3: Incorporate Maintenance Planning Document (MPD), in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–47A0007 RB, dated November 21, 2023, is ''Before further flight after accomplishing ACTION 1 and ACTION 2,'' this AD requires incorporating the MPD within 60 days after the effective date of this AD.

(i) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(k) Related Information

(1) For more information about this AD, contact Anthony Decaro, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone: 562–627–5374; email: *Anthony.D.Decaro@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the address specified in paragraph (l)(3) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 777–47A0007 RB, dated November 21, 2023.

(ii) [Reserved]

(3) For service information, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Boulevard, MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

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

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

Issued on March 19, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06130 Filed 3–22–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0759; Project Identifier AD–2023–01040–T]

RIN 2120–AA64

Airworthiness Directives; AVOX Systems Inc. (Formerly Scott Aviation) Oxygen Cylinder and Valve Assemblies; and Oxygen Valve Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2023–13–11, which applies to certain AVOX Systems Inc. (formerly Scott Aviation) oxygen cylinder and valve assemblies; and oxygen valve assemblies; installed on but not limited to various transport airplanes. AD 2023–13–11 requires an inspection of the oxygen valve assemblies, and oxygen cylinder and valve assemblies, to determine the serial number of the valve, cylinder, and entire assembly; and for certain assemblies and parts, a detailed inspection for correct spacing of the gap between the bottom of the packing retainer and top of the valve body on the assemblies and replacement of assemblies having unacceptable gaps. AD 2023–13–11 also limits the installation of affected parts under certain conditions and requires reporting inspection results and returning certain assemblies to the manufacturer. Since the FAA issued AD 2023–13–11, the manufacturer identified additional assemblies and parts subject to the unsafe condition. This proposed AD would continue to require the actions specified in AD 2023–13–11 and require similar actions for those additional assemblies and parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 9, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0759; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact AVOX Systems Inc., 225 Erie Street, Lancaster, NY 14086; telephone 716–683–5100; website *safranaerosystems.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7343; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0759; Project Identifier AD–2023–01040–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and

actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7343; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2023–13–11, Amendment 39–22496 (88 FR 50011, August 1, 2023) (AD 2023–13–11), for certain AVOX Systems Inc. (formerly Scott Aviation) oxygen cylinder and valve assemblies; and oxygen valve assemblies; installed on but not limited to various transport airplanes. AD 2023–13–11 was prompted by reports of cylinder and valve assemblies having oxygen leakage from the valve assembly vent hole, caused by the absence of a guide that maintains appropriate spacing between certain parts, and by a determination that additional assemblies and parts are affected by the unsafe condition addressed by AD 2022–04–09, Amendment 39–21951 (87 FR 10958, February 28, 2022) (AD 2022–04–09) (which was superseded by AD 2023–13–11). AD 2023–13–11 requires an inspection of the oxygen valve assemblies, and oxygen cylinder and valve assemblies, to determine the serial number of the valve, cylinder, and entire assembly. For assemblies and parts with certain serial numbers, AD 2023–13–11 also requires a detailed inspection for correct spacing of the gap between the bottom of the packing retainer and top of the valve body on the assemblies, and replacement of assemblies having unacceptable gaps. AD 2023–13–11 also limits the installation of affected parts under certain conditions and requires reporting inspection results and returning certain assemblies to the manufacturer. The agency issued AD 2023–13–11 to address oxygen leakage from the cylinder and valve assemblies, which could result in decreased or insufficient oxygen supply during a depressurization event; and heating or flow friction, which could cause an ignition event in the valve assembly.

Actions Since AD 2023–13–11 Was Issued

Since the FAA issued AD 2023–13–11, the manufacturer identified additional assemblies and parts, including a new part number 89794050 for oxygen cylinder and valve assemblies, that are subject to the unsafe condition. New service information has been issued that expands the population of discrepant parts, providing more serial numbers for which to inspect.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information. This service information specifies procedures for an inspection to determine the serial numbers of the oxygen cylinder and valve assemblies, and the oxygen valve assemblies, a detailed inspection for correct spacing of the gap between the bottom of the packing retainer and top of the valve body on the assemblies, parts marking, inspection report, and return of parts to the manufacturer. These documents are distinct since they apply to different assembly part numbers.

- AVOX Systems Inc. Alert Service Bulletin 10015804–35–01, Revision 04, dated November 9, 2023.
- AVOX Systems Inc. Alert Service Bulletin 10015804–35–02, Revision 06, dated August 30, 2023.
- AVOX Systems Inc. Alert Service Bulletin 10015804–35–03, Revision 05, dated September 29, 2023.

This AD also requires the following service information, which the Director of the Federal Register approved for incorporation by reference as of September 5, 2023 (88 FR 50011, August 1, 2023).

- AVOX Systems Inc. Alert Service Bulletin 10015804–35–01, Revision 03, dated June 7, 2021.
- AVOX Systems Inc. Alert Service Bulletin 10015804–35–02, Revision 03, dated March 11, 2022.
- AVOX Systems Inc. Alert Service Bulletin 10015804–35–03, Revision 03, dated June 18, 2021.

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

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2023–13–11. This proposed AD would apply to additional assemblies and parts, including a new part number, 89794050, for oxygen cylinder and valve assemblies. This proposed AD would require accomplishing the actions specified in the service information described previously. This proposed AD would also limit the installation of affected parts under certain conditions and require returning the affected parts and sending the inspection results to the manufacturer.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 3,777 oxygen cylinder and valve assemblies, and oxygen valve assemblies, installed on various transport category airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Serial number inspection (retained action from AD 2023-13-11).	1 work-hour × $85 per hour = $85	None	$85	$321, 045
Reporting (retained action from AD 2023–13–11)	1 work-hour × $85 per hour = $85	$0	85	321,045

The FAA estimates the following costs to do any necessary actions that would be required based on the results of the proposed inspection. The FAA has no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Detailed inspection	1 work-hour × $85 per hour = $85	$0	$85
Replacement	1 work-hour × $85 per hour = $85	(*)	85
Return of parts	1 work-hour × $85 per hour = $85	** 50	135

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

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

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA has determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2023–13–11, Amendment 39–22496 (88 FR 50011, August 1, 2023), and

■ b. Adding the following new AD:

AVOX Systems Inc. (formerly Scott Aviation): Docket No. FAA–2024–0759; Project Identifier AD–2023–01040–T

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 9, 2024.

(b) Affected ADs

This AD replaces AD 2023–13–11, Amendment 39–22496 (88 FR 50011, August 1, 2023) (AD 2023–13–11).

(c) Applicability

This AD applies to AVOX Systems Inc. (formerly Scott Aviation) oxygen cylinder and valve assemblies having part number (P/N) 89794050, 89794077, 89794015, 891511–14, 806835–01, 807982–01, 808433–01, or 891311–14; and oxygen valve assemblies (body and gage assemblies) having P/N 807206–01. These assemblies might be installed on, but not limited to, the aircraft identified in paragraphs (c)(1) through (12) of this AD, certificated in any category.

(1) Airbus SAS Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Airbus SAS Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes.

(3) Airbus SAS Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(4) Airbus SAS Model A318–111, –112, –121, and –122 airplanes.

(5) Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, –133, and –151N airplanes.

(6) Airbus SAS Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(7) Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(8) Airbus SAS Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, –343, and –941 airplanes.

(9) Airbus Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes.

(10) ATR—GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes.

(11) ATR—GIE Avions de Transport Régional Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes.

(12) The Boeing Company Model 747–8 series airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by reports of cylinder and valve assemblies having oxygen leakage from the valve assembly vent hole, caused by the absence of a guide that maintains appropriate spacing between certain parts, and by the manufacturer identifying additional assemblies and parts affected by the unsafe condition. The FAA is issuing this AD to address oxygen leakage from cylinder and valve assemblies. The unsafe condition, if not addressed, could result in decreased or insufficient oxygen supply during a depressurization event; and heating or flow friction, which could cause an ignition event in the valve assembly.

(f) Compliance

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

(g) Retained Definition of Detailed Inspection, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2023–13–11, with no changes. For the purposes of this AD, a detailed inspection is an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.

(h) Retained Identification of Affected Cylinder and Valve Assemblies, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2023–13–11, with no changes. Within 60 days after September 5, 2023 (the effective date of AD 2023–13–11), inspect the oxygen valve assemblies, and oxygen cylinder and valve assemblies, to determine if the serial numbers of the valve, cylinder, and entire assembly, are listed in Appendix 1 or Appendix 2, ''Affected Shipments,'' of the applicable service information identified in paragraphs (h)(1) through (3) of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial numbers can be conclusively determined from that review.

(1) AVOX Systems Inc. Alert Service Bulletin 10015804–35–01, Revision 03, dated June 7, 2021.

(2) AVOX Systems Inc. Alert Service Bulletin 10015804–35–02, Revision 03, dated March 11, 2022.

(3) AVOX Systems Inc. Alert Service Bulletin 10015804–35–03, Revision 03, dated June 18, 2021.

(i) Retained Inspection of the Gap, Parts Marking Actions, and Replacement, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2023–13–11, with no changes. If, during any inspection or records review required by paragraph (h) of this AD, any oxygen valve assembly, valve or cylinder of an oxygen cylinder and valve assembly, or oxygen cylinder and valve assembly having an affected serial number is found: Before further flight, do a detailed inspection for correct spacing of the gap between the bottom of the packing retainer and top of the valve body, in accordance with paragraph 3.C. of the Accomplishment Instructions of the applicable service information identified in paragraphs (h)(1) through (3) of this AD.

(1) If the gap is found to be acceptable, as defined in the applicable service information identified in paragraphs (h)(1) through (3) of this AD, before further flight, do the parts marking actions in accordance with paragraph 3.D.(1) of the Accomplishment Instructions of the applicable service information identified in paragraphs (h)(1) through (3) of this AD.

(2) If the gap is found to be unacceptable, as defined in the applicable service information identified in paragraphs (h)(1) through (3) of this AD, before further flight, remove the affected assembly, in accordance with paragraphs 3.D.(2) or 3.D.(3), as applicable, of the Accomplishment Instructions of the applicable service information identified in paragraphs (h)(1) through (3) of this AD; and replace with a serviceable assembly.

(j) Retained Reporting and Return of Parts, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2023–13–11, with no changes.

(1) Report the results of the inspection required by paragraph (i) of this AD within the applicable time specified in paragraph (j)(1)(i) or (ii) of this AD. Report the results in accordance with paragraph 3.D.(1)(a) of the Accomplishment Instructions of the applicable service information identified in paragraphs (h)(1) through (3) of this AD.

(i) If the inspection was done on or after September 5, 2023 (the effective date of AD 2023–13–11): Submit the report within 30 days after the inspection.

(ii) If the inspection was done before September 5, 2023 (the effective date of AD 2023–13–11): Submit the report within 30 days after September 5, 2023.

(2) If, during the inspection required by paragraph (i) of this AD, any gap is found to be unacceptable, within the applicable time specified in paragraph (j)(2)(i) or (ii) of this AD, return the assembly to the manufacturer in accordance with paragraph 3.D.(2) or 3.D.(3), as applicable, of the Accomplishment Instructions of the applicable service information identified in paragraphs (h)(1) through (3) of this AD, except you are not required to contact AVOX Systems Inc. for shipping instructions.

(i) If the inspection was done on or after September 5, 2023 (the effective date of AD 2023–13–11): Return the assembly within 30 days after the inspection.

(ii) If the inspection was done before September 5, 2023 (the effective date of AD 2023–13–11): Return the assembly within 30 days after September 5, 2023.

(k) Retained Parts Installation Limitation, With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2023–13–11, with no changes. As of September 5, 2023 (the effective date of AD 2023–13–11), no AVOX Systems Inc. oxygen valve assembly, or valve or cylinder that is part of an oxygen cylinder and valve assembly, or oxygen cylinder and valve assembly having an affected serial number identified in Appendix 1, ''Affected Shipments,'' or Appendix 2, ''Affected Shipments,'' of any AVOX Systems Inc. service information identified in paragraphs (h)(1) through (3) of this AD may be installed on any airplane unless the requirements of paragraph (i) of this AD have been accomplished on that affected assembly.

(l) New Identification of Additional Affected Cylinder and Valve Assemblies

Within 60 days after the effective date of this AD, inspect the oxygen valve assemblies, and oxygen cylinder and valve assemblies, to determine if the serial numbers of the valve, cylinder, and entire assembly, are listed in Appendix 3, ''Affected Shipments,'' of the applicable service information identified in paragraphs (l)(1) through (3) of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial numbers can be conclusively determined from that review.

(1) AVOX Systems Inc. Alert Service Bulletin 10015804–35–01, Revision 04, dated November 9, 2023.

(2) AVOX Systems Inc. Alert Service Bulletin 10015804–35–02, Revision 06, dated August 30, 2023.

(3) AVOX Systems Inc. Alert Service Bulletin 10015804–35–03, Revision 05, dated September 29, 2023.

(m) New Inspection of the Gap, Parts Marking Actions, and Replacement for Additional Parts

If, during any inspection or records review required by paragraph (l) of this AD, any oxygen valve assembly, valve or cylinder of an oxygen cylinder and valve assembly, or oxygen cylinder and valve assembly having an affected serial number is found: Before further flight, do a detailed inspection for correct spacing of the gap between the bottom of the packing retainer and top of the valve body, in accordance with paragraph 3.C. of the Accomplishment Instructions of the applicable service information identified in paragraphs (l)(1) through (3) of this AD.

(1) If the gap is found to be acceptable, as defined in the applicable service information identified in paragraphs (l)(1) through (3) of this AD, before further flight, do the parts marking actions in accordance with paragraph 3.D.(1) of the Accomplishment Instructions of the applicable service information identified in paragraphs (l)(1) through (3) of this AD.

(2) If the gap is found to be unacceptable, as defined in the applicable service information identified in paragraphs (l)(1) through (3) of this AD, before further flight, remove the affected assembly, in accordance with paragraphs 3.D.(2) or 3.D.(3), as applicable, of the Accomplishment Instructions of the applicable service information identified in paragraphs (l)(1) through (3) of this AD; and replace with a serviceable assembly.

(n) New Reporting and Return of Additional Parts

(1) Report the results of the inspection required by paragraph (m) of this AD within the applicable time specified in paragraph (n)(1)(i) or (ii) of this AD. Report the results in accordance with paragraph 3.D.(1)(a) of the Accomplishment Instructions of the applicable service information identified in paragraphs (l)(1) through (3) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(2) If, during the inspection required by paragraph (m) of this AD, any gap is found to be unacceptable, within the applicable time specified in paragraph (n)(2)(i) or (ii) of this AD, return the assembly to the manufacturer in accordance with paragraph 3.D.(2) or 3.D.(3), as applicable, of the Accomplishment Instructions of the applicable service information identified in paragraphs (l)(1) through (3) of this AD, except you are not required to contact AVOX Systems Inc. for shipping instructions.

(i) If the inspection was done on or after the effective date of this AD: Return the assembly within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Return the assembly within 30 days after the effective date of this AD.

(o) New Parts Installation Limitation

As of the effective date of this AD, no AVOX Systems Inc. oxygen valve assembly, or valve or cylinder that is part of an oxygen cylinder and valve assembly, or oxygen cylinder and valve assembly having an affected serial number identified in Appendix 3, ''Affected Shipments,'' of any AVOX Systems Inc. service information identified in paragraphs (l)(1) through (3) of this AD may be installed on any airplane unless the requirements of paragraph (m) of this AD have been accomplished on that affected assembly.

(p) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraphs (h) or (i) of this AD, if those actions were performed before September 5, 2023 (the effective date of AD 2023–13–11), using the service information specified in paragraphs (p)(1)(i) through (iii) of this AD. This service information is not incorporated by reference in this AD.

(i) AVOX Systems Inc. Service Bulletin 10015804–35–01, dated March 6, 2019; and AVOX Systems Inc. Alert Service Bulletin 10015804–35–01, Revision 01, dated July 9, 2019.

(ii) AVOX Systems Inc. Alert Service Bulletin 10015804–35–02, Revision 1, dated September 4, 2019.

(iii) AVOX Systems Inc. Service Bulletin 10015804–35–03, dated April 11, 2019; and AVOX Systems Inc. Alert Service Bulletin 10015804–35–03, Revision 01, dated May 21, 2019.

(2) This paragraph provides credit for the actions specified in paragraphs (h) or (i) of this AD, if those actions were performed before September 5, 2023 (the effective date of AD 2023–13–11), using the service information specified in paragraphs (p)(2)(i) through (iii) of this AD, which was incorporated by reference in AD 2022–04–09.

(i) AVOX Systems Inc. Alert Service Bulletin 10015804–35–01, Revision 02, dated October 16, 2019.

(ii) AVOX Systems Inc. Alert Service Bulletin 10015804–35–02, Revision 2, dated October 31, 2019.

(iii) AVOX Systems Inc. Alert Service Bulletin 10015804–35–03, Revision 02, dated October 15, 2019.

(3) This paragraph provides credit for the actions specified in paragraphs (h), (i), (l), or (m) of this AD, if those actions were performed before the effective date of this AD, using the service information specified in paragraphs (p)(3)(i) through (ii) of this AD. This service information is not incorporated by reference in this AD.

(i) AVOX Systems Inc. Alert Service Bulletin 10015804–35–02, Revision 04, dated June 30, 2023; or Revision 05, dated August 14, 2023.

(ii) AVOX Systems Inc. Alert Service Bulletin 10015804–35–03, Revision 04, dated June 12, 2023.

(q) Alternative Methods of Compliance (AMOCs)

(1) The Manager, East Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the East Certification Branch, send it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (r) of this AD or email to: *9-avs-nyaco-cos@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) AMOCs approved for AD 2023–13–11 are approved as AMOCs for the corresponding provisions of this AD.

(r) Related Information

(1) For more information about this AD, contact Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7343; email *9-avs-nyaco-cos@faa.gov.*

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

(s) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) AVOX Systems Inc. Alert Service Bulletin 10015804–35–01, Revision 04, dated November 9, 2023.

(ii) AVOX Systems Inc. Alert Service Bulletin 10015804–35–02, Revision 06, dated August 30, 2023.

(iii) AVOX Systems Inc. Alert Service Bulletin 10015804–35–03, Revision 05, dated September 29, 2023.

(4) The following service information was approved for IBR on September 5, 2023 (88 FR 50013, August 1, 2023).

(i) AVOX Systems Inc. Alert Service Bulletin 10015804–35–01, Revision 03, dated June 7, 2021.

(ii) AVOX Systems Inc. Alert Service Bulletin 10015804–35–02, Revision 03, dated March 11, 2022.

(iii) AVOX Systems Inc. Alert Service Bulletin 10015804–35–03, Revision 03, dated June 18, 2021.

(5) For service information identified in this AD, contact AVOX Systems Inc., 225 Erie Street, Lancaster, NY 14086; telephone 716–683–5100; website *safranaerosystems.com.*

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

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

Issued on March 18, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06032 Filed 3–22–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0758; Project Identifier MCAI–2023–00671–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–100–1A10 airplanes. This proposed AD was prompted by the discovery of a single-point failure within the left-hand and right-hand heater current monitor (HCM) units. This proposed AD would require installing a monitor circuit comprising relays external to the HCM units. This proposed AD would also require revising the normal and non-normal procedure sections of the existing airplane flight manual (AFM) to add new procedures associated with revised crew alerting system (CAS) messages. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 9, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0758; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Bombardier service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email: *ac.yul@aero.bombardier.com;* website: *bombardier.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Steven Dzierzynski, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0758; Project Identifier MCAI–2023–00671–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Steven Dzierzynski, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2023–33, dated May 10, 2023 (Transport Canada AD CF–2023–33) (also referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model BD–100–1A10 airplanes. The MCAI states that during a review of the air data system, Bombardier discovered that a single-point failure exists within the left-hand and right-hand HCM units. The HCM unit is designed with a single programmable logic device (PLD), which is responsible for the control and monitoring functions of the HCM unit. The PLD could fail in a way that it would erroneously energize the heater control relay and switch the heaters off. This failure could lead to un-annunciated loss of ice protection on the air data probes, resulting in the potential display of misleading airspeed, and erroneous indications to the flightcrew.

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

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0758.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletin 100–30–06 and Bombardier Service Bulletin 350–30–001, both dated December 29, 2022. The service information specifies procedures to install a monitoring circuit comprising relays external to the HCM units, including reworking the plate assembly, installing relay bracket assemblies, installing relays and a rail terminal module, installing wires for the relays, and performing operational testing. These documents are distinct since they apply to different airplane serial numbers.

The FAA also reviewed the following service information, which specifies new normal procedures to follow after installation of the monitoring circuit. These documents are distinct since they apply to different airplane serial numbers.

- BEFORE STARTING ENGINES section, Subsection 04–02, Chapter 4, Normal Procedures, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 72, dated May 11, 2023. (For obtaining the procedures for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.)

• BEFORE STARTING ENGINES section, Subsection 04–02, Chapter 4, Normal Procedures, Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023. (For obtaining the procedures for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.)

The FAA reviewed the following service information, which specifies non-normal procedures to follow after installation of the monitoring circuit. These documents are distinct since they apply to different airplane serial numbers.

• Subsection 05–27, Ice & Rain Protection, Chapter 5, Non-Normal Procedures, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 72, dated May 11, 2023. (For obtaining the procedures for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.)

• Subsection 05–27, Ice & Rain Protection, Chapter 5, Non-Normal Procedures, Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023. (For obtaining the procedures for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.)

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described. This AD also requires revising the existing AFM.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 343 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 70 work-hours × $85 per hour = Up to $5,950.00	Up to $2,324	Up to $8,274	Up to $2,837,982.

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2024–0758; Project Identifier MCAI–2023–00671–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 9, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, serial numbers 20003 through 20936 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

(e) Unsafe Condition

This AD was prompted by a review of the air data system where Bombardier discovered that a single-point failure exists within the left-hand and right-hand heater current monitor (HCM) units. The FAA is issuing this AD to address the failure of the programmable logic device in the left-hand and right-hand HCM units. The unsafe condition, if not addressed, could lead to un-annunciated loss of ice protection on the air data probes, resulting in the potential display of misleading airspeed, and erroneous indications to the flightcrew.

(f) Compliance

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

(g) Monitoring Circuit Installation and Tests

Within 60 months from the effective date of this AD, install a monitoring circuit comprising relays external to the HCM units, in accordance with sections 2.B. and 2.C. of the Accomplishment Instructions of the applicable service information specified in paragraph (g)(1) or (2) of this AD.

(1) Bombardier Service Bulletin 100–30–06, dated December 29, 2022 (for airplane serial numbers 20003 through 20500 inclusive).

(2) Bombardier Service Bulletin 350–30–001, dated December 29, 2022 (for airplane serial numbers 20501 through 20936 inclusive); as applicable.

(h) Revision of Existing Airplane Flight Manual (AFM)

Within 60 months from the effective date of this AD, and after the completion of the actions required by paragraph (g) of this AD, revise the existing AFM as specified in paragraphs (h)(1) through (4) of this AD, as applicable.

(1) For airplane serial numbers 20003 through 20500 inclusive: Revise Chapter 4, Normal Procedures, to include the information in BEFORE STARTING ENGINES section, Subsection 04–02, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 72, dated May 11, 2023.

Note 1 to paragraph (h)(1): For obtaining the procedures specified in paragraphs (h)(1) and (2) of this AD for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

(2) For airplane serial numbers 20003 through 20500 inclusive: Revise Chapter 5, Non-Normal Procedures, to include the information in Subsection 05–27, Ice & Rain Protection, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 72, dated May 11, 2023.

(3) For airplane serial numbers 20501 through 20936 inclusive: Revise Chapter 4, Normal Procedures, to include the information in BEFORE STARTING ENGINES section, Subsection 04–02, Bombardier Challenger 350, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023.

Note 2 to paragraph (h)(3): For obtaining the procedures specified in paragraphs (h)(3) and (4) of this AD for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.

(4) For airplane serial numbers 20501 through 20936 inclusive: Revise Chapter 5, Non-Normal Procedures, to include the information in Subsection 05–27, Ice & Rain Protection, Bombardier Challenger 350, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-NYACO-COS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Additional Information

(1) Refer to Transport Canada AD CF–2023–33, dated May 10, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2024–0758.

(2) For more information about this AD, contact Steven Dzierzynski, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) BEFORE STARTING ENGINES section, Subsection 04–02, Chapter 4, Normal Procedures, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 72, dated May 11, 2023.

Note 3 to paragraph (k)(2)(i): For obtaining the procedures specified in paragraphs (k)(2)(i) and (ii) of this AD for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

(ii) Subsection 05–27, Ice & Rain Protection, Chapter 5, Non-Normal Procedures, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 72, dated May 11, 2023.

(iii) BEFORE STARTING ENGINES section, Subsection 04–02, Chapter 4, Normal Procedures, Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023.

Note 4 to paragraph (k)(2)(iii): For obtaining the procedures specified in paragraphs (k)(2)(iii) and (iv) of this AD for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.

(iv) Subsection 05–27, Ice & Rain Protection, Chapter 5, Non-Normal Procedures, Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023.

(v) Bombardier Service Bulletin 100–30–06, dated December 29, 2022.

(vi) Bombardier Service Bulletin 350–30–001, dated December 29, 2022.

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*

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

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

Issued on March 15, 2024.

Victor Wicklund,

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

[FR Doc. 2024–05962 Filed 3–22–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0762; Project Identifier AD–2023–01194–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 757 airplanes. This proposed AD was prompted by reports of several occurrences of a power transfer unit (PTU) control valve that failed to open when commanded. This proposed AD would require installing new relays and changing certain wire bundles leading to the PTU control valve. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 9, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0762; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2024–0762.

FOR FURTHER INFORMATION CONTACT: Katherine Venegas, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562–627–5353; email: *katherine.venegas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0762; Project Identifier AD–2023–01194–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Katherine Venegas, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562–627–5353; email: *katherine.venegas@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received reports of several occurrences of a PTU control valve that failed to open when commanded on a non-Model 757 airplane. This condition is caused by the failure of a relay in the PTU control valve because of the voltage drop from its power source. A subsequent analysis of the Model 757 hydraulic system found that this PTU control valve is also used on Model 757 airplanes and is therefore a possible safety issue for Model 757 airplanes. Failure of the PTU control valve, in conjunction with a loss of the left engine and engine driven pump (EDP) during takeoff, may result in a failure of the landing gear to retract. This condition, if not addressed, could add drag, affect climb gradient, and prevent the airplane from clearing obstacles on takeoff. This condition can result in loss of continued safe flight and landing.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 757–29A0071 RB, dated November 16, 2023. This service information specifies procedures for changing the wire bundle from circuit breaker C4054 to the P33 panel, installing new relays in the P33 panel, and changing wire bundles to the PTU control valve.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 467 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installations, changes, and tests	45 work-hours × $85 per hour = $3,825	$3,260	$7,085	$3,308,695

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2024–0762; Project Identifier AD–2023–01194–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 9, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category, and identified in Boeing Alert Requirements Bulletin 757–29A0071 RB, dated November 16, 2023.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Unsafe Condition

This AD was prompted by reports of several occurrences of a power transfer unit (PTU) control valve that failed to open when commanded. The FAA is issuing this AD to address failure of the PTU control valve, which, in conjunction with a loss of the left engine and engine driven pump (EDP) during takeoff, may result in a failure of the landing gear to retract. This condition, if not addressed, could add additional drag, affect climb gradient, and prevent the ability to clear obstacles on takeoff. This condition can result in loss of continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–29A0071 RB, dated November 16, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–29A0071 RB, dated November 16, 2023.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–29A0071, dated November 16, 2023, which is referred to in Boeing Alert Requirements Bulletin 757–29A0071 RB, dated November 16, 2023.

(h) Exceptions to Service Information Specifications

Where the Compliance Time column of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–29A0071 RB, dated November 16, 2023, uses the phrase ''the Original Issue date of Requirements Bulletin 757–29A0071 RB,'' this AD requires using the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *AMOC@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Related Information

For more information about this AD, contact Katherine Venegas, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562–627–5353; email: *katherine.venegas@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 757–29A0071 RB, dated November 16, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

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

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

Issued on March 19, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06129 Filed 3–22–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0632; Airspace Docket No. 24–ANE–2]

RIN 2120–AA66

Amendment of Class E Airspace; Nashua, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from the surface for Boire Field Airport, Nashua, NH by replacing the reference to Manchester Very High-Frequency Omnidirectional Range (VOR)/Distance Measuring Equipment (DME). This action would not change the airspace boundaries or operating requirements.

DATES: Comments must be received on or before May 9, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–0632 and Airspace Docket No. 24–ANE–2 using any of the following methods:

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

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 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 for 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 the 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 for 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: Justin T. Rhodes, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5478.

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 amend Class E airspace in Nashua, NH. An airspace evaluation determined that this update is necessary to support IFR operations in the area.

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 receives 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 delay. 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 posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.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 Operations Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except on Federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6004 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 will be published 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 7400.11 lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E

airspace extending from the surface for Boire Field Airport, Nashua, NH by replacing the reference to ''Manchester VOR/DME'' which is scheduled to be decommissioned September 5, 2024. This action would not change the airspace boundaries or operating requirements.

Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

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 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 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.

Lists 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 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 6004 Class E Airspace Areas Extending Upward From the Surface of the Earth.

* * * * *

ANE NH E4 Nashua, NH [Amended]

Boire Field Airport, NH
(Lat. 42°46′57″ N, long. 71°30′51″ W)

That airspace extending upward from the surface within 1.1 miles on each side of the Boire Field Airport 67° bearing extending from the 5-mile radius to 8.4 miles northeast of Boire Field Airport.

* * * * *

Issued in College Park, Georgia, on March 18, 2024.

Patrick Young,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2024–06102 Filed 3–22–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–108761–22]

RIN 1545–BQ58

Charitable Remainder Annuity Trust Listed Transaction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed regulations that would identify certain charitable remainder annuity trust (CRAT) transactions and substantially similar transactions as listed transactions, a type of reportable transaction. Material advisors and certain participants in these listed transactions would be required to file disclosures with the IRS and would be subject to penalties for failure to disclose. The proposed regulations would affect participants in these transactions as well as material advisors but provide that certain organizations whose only role or interest in the transaction is as a charitable remainderman will not be treated as participants in the transaction or as parties to a prohibited tax shelter transaction subject to excise taxes and disclosure requirements. Finally, this document provides notice of a public hearing on the proposed regulations.

DATES:

Comments: Electronic or written comments must be received by May 24, 2024.

Public Hearing: A public hearing on the proposed regulation is scheduled for July 11, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by May 24, 2024. If no outlines are received by May 24, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. on July 9, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://regulations.gov* (indicate IRS and REG–108761–22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish availability any comments submitted to the IRS's public docket. Send paper submission to CC:PA:01:PR (REG–108761–22) room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Charles D. Wien of the Office of Associate Chief Counsel (Passthroughs & Special Industries), (202) 317–5279; concerning submissions of comments and requests for hearing, Vivian Hayes at (202) 317–6901 (not toll-free numbers) or by sending an email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed additions to 26 CFR part 1 (Income Tax Regulations) under section 6011 of the Internal Revenue Code (Code). The additions identify certain transactions as ''listed transactions'' for purposes of section 6011.

I. Disclosure of Reportable Transactions by Participants and Penalties for Failure To Disclose

Section 6011(a) generally provides that, when required by regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), ''any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the

forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.''

Section 1.6011–4(a) provides that every taxpayer that has participated in a reportable transaction within the meaning of § 1.6011–4(b) and who is required to file a tax return must file a disclosure statement within the time prescribed in § 1.6011–4(e). Reportable transactions are identified in § 1.6011–4 and include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. *See* § 1.6011–4(b)(2) through (6). Section 1.6011–4(b)(2) defines a listed transaction as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

Section 1.6011–4(c)(4) provides that a transaction is ''substantially similar'' if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a listed transaction even though it may involve different entities or use different Code provisions.

Section 1.6011–4(c)(3)(i)(A) provides that a taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under § 1.6011–4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance also may identify types or classes of persons that will not be treated as participants in a listed transaction.

Section 1.6011–4(d) and (e) provide that the disclosure statement Form 8886, *Reportable Transaction Disclosure Statement* (or successor form), must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. A copy of the disclosure statement must be sent to the IRS's Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction.

Section 1.6011–4(e)(2)(i) provides that, if a transaction becomes a listed transaction after the filing of a taxpayer's tax return reflecting the taxpayer's participation in the listed transaction and before the end of the period of limitations for assessment for any taxable year in which the taxpayer participated in the listed transaction, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction becomes a listed transaction. This requirement extends to an amended return and exists regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction. The Commissioner of Internal Revenue (Commissioner) also may determine the time for disclosure of listed transactions in the published guidance identifying the transaction.

Participants required to disclose these transactions under § 1.6011–4 who fail to do so are subject to penalties under section 6707A of the Code. Section 6707A(b) provides that the amount of the penalty is 75 percent of the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes), subject to minimum and maximum penalty amounts. The minimum penalty amount is $5,000 in the case of a natural person and $10,000 in any other case. For a listed transaction, the maximum penalty amount is $100,000 in the case of a natural person and $200,000 in any other case.

Additional penalties also may apply. In general, section 6662A of the Code imposes a 20 percent accuracy-related penalty on any understatement (as defined in section 6662A(b)(1)) attributable to an adequately disclosed reportable transaction. If the taxpayer had a requirement to disclose participation in the reportable transaction but did not adequately disclose the transaction in accordance with the regulations under section 6011, the taxpayer is subject to an increased penalty rate equal to 30 percent of the understatement. *See* section 6662A(c). Section 6662A(b)(2) provides that section 6662A applies to any item that is attributable to any listed transaction and any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

Participants required to disclose listed transactions who fail to do so also are subject to an extended period of limitations under section 6501(c)(10) of the Code. That section provides that the time for assessment of any tax with respect to the transaction shall not expire before the date that is one year after the earlier of the date the participant discloses the transaction or the date a material advisor discloses the participation pursuant to a written request under section 6112(b)(1)(A) of the Code.

II. Disclosure of Reportable Transactions by Material Advisors and Penalties for Failure To Disclose

Section 6111(a) provides that each material advisor with respect to any reportable transaction shall make a return setting forth: (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. Such return shall be filed not later than the date specified by the Secretary.

Section 301.6111–3(a) of the Procedure and Administration Regulations provides that each material advisor with respect to any reportable transaction, as defined in § 1.6011–4(b), must file a return as described in § 301.6111–3(d) by the date described in § 301.6111–3(e).

Section 301.6111–3(b)(1) provides that a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in § 301.6111–3(b)(3) for the material aid, assistance, or advice. Under § 301.6111–3(b)(2)(i) and (ii), a person provides material aid, assistance, or advice if the person provides a tax statement, which is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in § 1.6011–4(b)(2) through (7).

Material advisors must disclose transactions on Form 8918, *Material Advisor Disclosure Statement* (or successor form), as provided in § 301.6111–3(d) and (e). Section 301.6111–3(e) provides that the material advisor's disclosure statement for a reportable transaction must be filed with the OTSA by the last day of the

month that follows the end of the calendar quarter in which the advisor becomes a material advisor with respect to a reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. The disclosure statement must be sent to the OTSA at the address provided in the instructions for Form 8918 (or successor form).

Section 301.6111–3(d)(2) provides that the IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor as defined in § 301.6111–3(b). The reportable transaction number must be provided at the time the transaction is entered into, or, if the transaction is entered into prior to the material advisor's receipt of the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Section 6707(a) of the Code provides that a material advisor who fails to file a timely disclosure, or files an incomplete or false disclosure statement, is subject to a penalty. Pursuant to section 6707(b)(2), for listed transactions, the penalty is the greater of (A) $200,000, or (B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return is filed under section 6111.

Additionally, section 6112(a) provides that each material advisor with respect to any reportable transaction shall (whether or not required to file a return under section 6111 with respect to such transaction) maintain a list (1) identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction and (2) containing such other information as the Secretary may by regulations require. Material advisors must furnish such lists to the IRS in accordance with § 301.6112–1(e).

A material advisor may be subject to a penalty under section 6708 of the Code for failing to maintain a list under section 6112(a) and failing to make the list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request. Section 6708(a) provides that the penalty is $10,000 per day for each day of the failure after the 20th day. However, no penalty will be imposed with respect to the failure on any day if such failure is due to reasonable cause.

III. Tax-Exempt Entities as Parties to Prohibited Tax Shelter Transactions

Section 4965 of the Code is intended to deter certain ''tax-exempt entities'' (as defined in section 4965(c)) from facilitating ''prohibited tax shelter transactions,'' which include listed transactions. Section 4965(a)(1), in part, imposes an excise tax on a tax-exempt entity for the taxable year in which the tax-exempt entity becomes a party to a transaction that is a ''prohibited tax shelter transaction'' at the time it becomes a party to the transaction, and for any subsequent taxable year, in the amount determined under section 4965(b)(1) (section 4965 tax). Tax-exempt entities subject to the section 4965 tax are listed in section 4965(c)(1) through (3) and include, among others, entities and governmental units described in sections 501(c) and 170(c) of the Code (other than the United States). A tax-exempt entity that is a party to a prohibited tax shelter transaction generally also is subject to various reporting and disclosure obligations.

Additionally, section 4965(a)(2) imposes an excise tax on an ''entity manager'' if the manager approves the tax-exempt entity as a party (or otherwise causes the tax-exempt entity to be a party) to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction. The amount of this excise tax is determined under section 4965(b)(2) (entity manager tax).

A. The Section 4965 Tax

The amount of the section 4965 tax owed by a tax-exempt entity depends on whether the tax-exempt entity knows, or has reason to know, that a transaction is a prohibited tax shelter transaction at the time the entity becomes a party to the transaction. A tax-exempt entity is treated as knowing or having reason to know that a transaction is a prohibited tax shelter transaction if one or more of its entity managers knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity manager(s) approved the tax-exempt entity as (or otherwise caused the entity to be) a party to the transaction.[1] The tax-exempt entity also is attributed the knowledge or reason to know of certain entity managers—those persons with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization—even if the entity manager does not approve the entity as (or otherwise cause the entity to be) a party to the transaction.

Section 53.4965–4(a)(1) provides that a tax-exempt entity is a ''party'' to a prohibited tax shelter transaction if it facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status. In addition, under § 53.4965–4(a)(2) and (b), the Secretary may issue published guidance to identify tax-exempt entities by type, class, or role that will or will not be treated as parties to a prohibited tax shelter transaction.

If the tax-exempt entity unknowingly becomes a party to a prohibited tax shelter transaction, the section 4965 tax generally equals the greater of (1) the product of the highest rate of tax under section 11 of the Code (currently 21 percent) and the tax-exempt entity's net income attributable to the prohibited tax shelter transaction, or (2) the product of the highest rate of tax under section 11 and 75 percent of the proceeds received by the tax-exempt entity that are attributable to the prohibited tax shelter transaction. If the tax-exempt entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the tax-exempt entity became a party to the transaction, the section 4965 tax increases to the greater of (1) 100 percent of the tax-exempt entity's net income attributable to the prohibited tax shelter transaction, or (2) 75 percent of the tax-exempt entity's proceeds attributable to the prohibited tax shelter transaction.

The terms ''net income'' and ''proceeds'' are defined in § 53.4965–8. In general, a tax-exempt entity's net income attributable to a prohibited tax shelter transaction is its gross income derived from the transaction, reduced by those deductions that are attributable to the transaction and that would be allowed by chapter 1 of the Code (chapter 1) if the tax-exempt entity were treated as a taxable entity for this purpose, and further reduced by the taxes imposed by subtitle D of the Code (other than the section 4965 tax) with respect to the transaction. In the case of a tax-exempt entity that is a party to the transaction by reason of facilitating a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent,

[1] Section 53.4965–6 of the Foundation and Similar Excise Tax Regulations (26 CFR part 53) provides factors to be considered in determining whether an entity manager knows or has reason to know that a transaction is a prohibited tax shelter transaction.

or tax-favored status, the term ''proceeds,'' solely for purposes of section 4965, means the gross amount of the tax-exempt entity's consideration for facilitating the transaction, not reduced for any costs or expenses attributable to the transaction. Published guidance with respect to a particular prohibited tax shelter transaction may designate additional amounts as proceeds from the transaction for purposes of section 4965. In addition, for all tax-exempt entities that are parties to a prohibited tax shelter transaction, any amount that is a gift or a contribution to a tax-exempt entity and that is attributable to a prohibited tax shelter transaction is treated as proceeds for purposes of section 4965, unreduced by any associated expenses.

B. Entity Manager Tax

The amount of the entity manager tax determined under section 4965(b)(2) on an entity manager (as defined in section 4965(d)) equals $20,000 for each instance that the manager approves the tax-exempt entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction. This liability is not joint and several.

C. Disclosures

Section 53.6011–1 requires that a tax-exempt entity subject to the section 4965 excise tax must file Form 4720, *Return of Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code,* to report the liability and pay the tax due under section 4965(a)(1). Under § 1.6033–5, a tax-exempt entity that is a party to a prohibited tax shelter transaction must file Form 8886–T, *Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction,* to disclose that it is a party to a prohibited tax shelter transaction, the identity of any other party (whether taxable or tax-exempt) to such transaction that is known to the tax-exempt entity, and certain other information. Under § 1.6033–2, if the tax-exempt entity is required to file Form 990, *Return of Organization Exempt From Income Tax,* it must disclose on that form that it is a party to a prohibited tax shelter transaction, whether any taxable party notified the tax-exempt entity that it was or is a party to a prohibited tax shelter transaction, and whether the tax-exempt entity filed Form 8886–T.

Section 6011(g) and § 301.6011(g)–1 provide that any taxable party to a prohibited tax shelter transaction must disclose to each tax-exempt entity that the taxable party knows or has reason to know is a party to such transaction that the transaction is a prohibited tax shelter transaction.

IV. Charitable Remainder Annuity Trusts (CRATs)

For purposes of section 664 of the Code, section 664(d)(1) provides that a charitable remainder annuity trust (CRAT) is a trust:

(A) From which a sum certain (which is not less than 5 percent nor more than 50 percent of the initial fair market value (FMV) of all property placed in trust) is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c), and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals;

(B) From which no amount other than the payments described in section 664(d)(1)(A) and other qualified gratuitous transfers described in section 664(d)(1)(C) may be paid to or for the use of any person other than an organization described in section 170(c);

(C) Whose remainder interest, following the termination of the payments described in section 664(d)(1)(A), is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employment securities (as defined by section 664(g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7) of the Code) in a qualified gratuitous transfer (as defined by 664(g)); and

(D) Whose remainder interest has a value (determined under section 7520) of at least 10 percent of the initial net FMV of all property placed in the trust.

Section 664(b) provides, in part, that amounts distributed by a CRAT are considered as having the following characteristics in the hands of a beneficiary to whom the annuity described in section 664(d)(1)(A) is paid:

(1) First, as amounts of income (other than gains, and amounts treated as gains, from the sale or other disposition of capital assets) includible in gross income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years;

(2) Second, as a capital gain to the extent of the capital gain of the trust for the year and the undistributed capital gain of the trust for prior years;

(3) Third, as other income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years; and

(4) Fourth, as a distribution of trust corpus.

Under section 664(c)(1), a CRAT is not subject to any tax imposed by subtitle A of the Code. Section 664(c)(2), in part, imposes an excise tax on a CRAT that has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F of chapter 1 applies to such trust) for a taxable year. That excise tax is equal to the amount of such unrelated business taxable income.

V. Tax Avoidance Transactions Using a CRAT

The Treasury Department and the IRS are aware of transactions in which taxpayers attempt to use a CRAT and a single premium immediate annuity (SPIA) to permanently avoid recognition of ordinary income and/or capital gain. Taxpayers engaging in these transactions claim that distributions from the trust are not taxable to the beneficiaries as ordinary income or capital gain under section 664(b) because the distributions constitute the trust's unrecovered investment in the SPIA, thus claiming that a significant portion of the distributions is excluded from gross income under section 72(b)(2) of the Code. Taxpayers also claim that the trust qualifies as a CRAT and thus is not subject to tax on the trust's realized ordinary income or capital gain under section 664(c)(1), even though the trust may not meet all of the requirements of section 664(d)(1).

In these transactions, a grantor creates a trust purporting to qualify as a CRAT under section 664. Generally, the grantor funds the trust with property having a FMV in excess of its basis (appreciated property) such as interests in a closely-held business, and/or assets used or produced in a trade or business. The trust then sells the appreciated property and uses some or all of the proceeds from the sale of the contributed property to purchase an annuity. On a Federal income tax return, the beneficiary of the trust treats the annuity amount payable from the trust as if it were, in whole or in part, an annuity payment subject to section 72,[2] instead of as carrying out to the beneficiary amounts in the ordinary

[2] Section 72 governs the tax treatment of payments received as an annuity, and generally causes only the portion of each payment in excess of the investment in the contract (basis) to be included in the recipient's gross income.

income and capital gain tiers of the trust in accordance with section 664(b).

As result of treating section 72 as applying to the amounts received (typically paid by an insurance company) as part of the annuity amount, the beneficiary reports as income only a small portion of the amount the beneficiary received from the SPIA. The beneficiary treats the balance of the annuity amount as an excluded portion representing a return of investment.[3] The beneficiary thus claims that the beneficiary is taxed as if the beneficiary were the owner of the SPIA, rather than the SPIA being an asset owned by the CRAT, which the trustee purchased to fund the annuity amount payable from the trust. Under the beneficiary's theory, until the entire investment in the SPIA has been recovered, the only portion of the annuity amount includable in the beneficiary's income is that portion of the SPIA annuity required to be included in income under section 72. The beneficiary also maintains that the distribution is not subject to section 664(b), which would treat a substantial portion of the annuity amount as gain attributable to the sale of the appreciated property contributed to the CRAT.

The trustee also might take the position that the transfer of the appreciated property to the purported CRAT gives those assets a step-up in basis to FMV as if they had been sold to the trust. The transfer of property to a CRAT, however, does not give those assets a step-up in basis to FMV, as if they had been sold to the trust, giving the trust a cost basis under section 1012 of the Code. Instead, the transfer to the CRAT is a gift for Federal tax purposes. When a grantor transfers appreciated property to a CRAT, the CRAT's basis in the assets is determined under section 1015 of the Code. Under section 1015(a) and (d), property transferred by gift (whether or not in trust) retains its basis in the hands of the donor, increased (but not above FMV) by any gift tax paid on the transfer.

The claimed application of sections 664 and 72 to the transaction is incorrect. Proper application of the rules of sections 664 and 72 to the transaction results in annual ordinary income from the annuity payments from the SPIA being added to the section 664(b)(1) (ordinary income) tier of the CRAT's income each year, and a one-time amount being added to the section 664(b)(2) (capital gains) tier at the time of the sale of the property by the CRAT (assuming the asset is of a kind to produce capital gain). Assuming no other activity in the CRAT, under section 664(b), the beneficiary of the CRAT must treat the annuity amount each year as first consisting of the ordinary income portion of the annuity payments from the SPIA. The balance of the annuity amount must be treated as consisting of any accumulated ordinary income of the CRAT, then accumulated capital gain, and then other income of the CRAT, only reaching non-taxable corpus to the extent these three accounts have been exhausted.

In addition, certain features of the trust may cause the trust to fail to meet all of the requirements of section 664(d)(1). While the trust instrument generally resembles one of the eight sample CRAT forms provided in Rev. Proc. 2003–53, 2003–2 C.B. 230; Rev. Proc. 2003–54, 2003–2 C.B. 236; Rev. Proc, 2003–55, 2003–2 C.B. 242; Rev. Proc. 2003–56, 2003–2 C.B. 249; Rev. Proc. 2003–57, 2003–2 C.B. 257; Rev. Proc. 2003–58, 2003–2 C.B. 262; Rev. Proc. 2003–59, 2003–2 C.B 268; and Rev. Proc. 2003–60, 2003–2 C.B. 274 (Sample CRAT Revenue Procedures), it might have one or more significant modifications. For example, the trust instrument might provide that, in each taxable year of the trust, the trustee must pay to the beneficiary during the annuity period, an annuity amount equal to the greater of (1) an amount which meets the requirements of section 664(d)(1)(A) or (2) the payments received by the trustee from one or more SPIAs purchased by the trustee.

The trust instrument also might provide for a current payment to an organization described in section 170(c) (Charitable Remainderman) in lieu of the payment of the remainder interest described in section 664(d)(1)(C). For example, the trust instrument might state that, in lieu of transferring the remainder amount required pursuant to section 664(d)(1)(C) (Remainder Interest) to the Charitable Remainderman, the trustee, upon the availability of adequate funding, currently may pay to the Charitable Remainderman a cash sum equal to at least 10 percent of the initial FMV of the trust property plus a nominal amount of cash. The trust agreement also might provide that the trustee cannot make a distribution in kind to satisfy this cash distribution. This payment, equal to at least 10 percent of the initial FMV of the trust property, would be the only payment to the Charitable Remainderman. The governing instrument of a CRAT may provide for an amount other than the annuity amount described in § 1.664–2(a)(1) to be paid (or to be paid in the discretion of the trustee) to an organization described in § 170(c) provided that, in the case of distributions in kind, the adjusted basis of the property distributed is fairly representative of the adjusted basis of the property available for payment on the date of payment. *See* § 1.664–2(a)(4). However, nowhere in section 664(d)(1)(D) does it permit a current payment, determined based on the value of the trust at its funding, to be made in lieu of, and as a substitute for, the required payment of the remainder interest (that is, the entire corpus of the trust at termination of the annuity period) described in section 664(d)(1)(C) to the Charitable Remainderman.

The significant modifications identified in the prior paragraphs deviate from the Sample CRAT Revenue Procedures in ways that prevent the qualification of the trust as a valid CRAT under section 664, regardless of the actual administration of the CRAT. These modifications are made in these transactions in order to effectuate the structure. Specifically, a provision authorizing the payment of an annuity amount in excess of the amount described in section 664(d)(1)(A), and a provision authorizing a current payment in lieu of the payment of the remainder interest described in section 664(d)(1)(C), violate mandatory requirements of a valid CRAT.

VI. Purpose of Proposed Regulations

On March 3, 2022, the Sixth Circuit issued an order in *Mann Construction* v. *United States,* 27 F.4th 1138, 1147 (6th Cir. 2022), holding that Notice 2007–83, 2007–2 C.B. 960, which identified certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies as listed transactions, violated the Administrative Procedure Act (APA), 5 U.S.C. 551–559, because the notice was issued without following the notice-and-comment procedures required by section 553 of the APA. The Sixth Circuit reversed the decision of the district court, which held that Congress had authorized the IRS to identify listed transactions without notice and comment. See *Mann Construction, Inc.* v. *United States,* 539 F.Supp.3d 745, 763 (E.D. Mich. 2021).

Relying on the Sixth Circuit's analysis in *Mann Construction,* three district courts and the Tax Court have concluded that IRS notices identifying listed transactions were improperly issued because they were issued without following the APA's notice and comment procedures. See *Green Rock, LLC* v. *IRS,* 2023 WL 1478444 (N.D. AL.,

[3] The beneficiary also claims that section 72(u) does not apply because the SPIA is an ''immediate annuity'' under section 72(u)(3)(E).

February 2, 2023) (Notice 2017–10); *GBX Associates, LLC,* v. *United States,* 1:22cv401 (N.D. Ohio, Nov. 14, 2022) (same); *Green Valley Investors, LLC, et al.* v. *Commissioner,* 159 T.C. No. 5 (Nov. 9, 2022) (same); see also *CIC Services, LLC* v. *IRS,* 2022 WL 985619 (E.D. Tenn. March 21, 2022), *as modified by* 2022 WL 2078036 (E.D. Tenn. June 2, 2022) (Notice 2016–66, identifying a transaction of interest).

The Treasury Department and the IRS disagree with the Sixth Circuit's decision in *Mann Construction* and the subsequent decisions that have applied that reasoning to find other IRS notices invalid and are continuing to defend the validity of notices identifying transactions as listed transactions in circuits other than the Sixth Circuit. At the same time, however, to avoid any confusion and to ensure consistent enforcement of the tax laws throughout the nation, the Treasury Department and the IRS are issuing these proposed regulations to identify certain charitable remainder trust transactions as listed transactions for purposes of all relevant provisions of the Code and Treasury Regulations.

These proposed regulations propose to identify the charitable remainder trust transactions described in proposed § 1.6011–15(b), and substantially similar transactions, as listed transactions for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112. In addition, they inform taxpayers that participate in these transactions, and persons who act as material advisors with respect to these transactions, that they would need to disclose the transaction in accordance with the final regulations and the regulations issued under sections 6011 and 6111. Material advisors must also maintain lists as required by section 6112.

Explanation of Provisions

I. Charitable Remainder Annuity Trust Transaction

Proposed § 1.6011–15(a) would identify a transaction that is the same as, or substantially similar to, the transaction described in proposed § 1.6011–15(b) as a listed transaction for purposes of § 1.6011–4(b)(2). ''Substantially similar'' is defined in § 1.6011–4(c)(4) to include any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or a similar tax strategy.

A transaction is described in proposed § 1.6011–15(b) if it includes the following elements:

(i) The grantor creates a trust purporting to qualify as a CRAT under section 664;

(ii) The grantor funds the trust with property having a FMV in excess of its basis (contributed property);

(iii) The trustee sells the contributed property;

(iv) The trustee uses some or all of the proceeds from the sale of the contributed property to purchase an annuity; and

(v) On a Federal income tax return, the beneficiary of the trust (Beneficiary) treats the amount payable from the trust as if it were, in whole or in part, an annuity payment subject to section 72, instead of as carrying out to the Beneficiary amounts in the ordinary income and capital gain tiers of the trust in accordance with section 664(b).

II. Participants

Whether a taxpayer has participated in the listed transaction described in proposed § 1.6011–15(b) is determined under § 1.6011–4(c)(3)(i)(A). Participants include any person whose tax return reflects tax consequences or a tax strategy described in proposed § 1.6011–15(b). These tax consequences include those tax consequences described in proposed § 1.6011–15(b) that would affect any gift tax return, whether or not such gift tax return was filed. *See* § 25.6011–4. A taxpayer also has participated in a transaction described in proposed § 1.6011–15(b) if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences, or a tax strategy, described in proposed § 1.6011–15(b).

III. Material Advisors

Material advisors who make a tax statement with respect to transactions identified as listed transactions in proposed § 1.6011–15(b) would have disclosure and list maintenance obligations under sections 6111 and 6112. *See* §§ 301.6111–3 and 301.6112–1. One of the requirements to be a material advisor under section 6111(b)(1) is that the person must directly or indirectly derive gross income in excess of the threshold amount provided in 6111(b)(1)(B) for providing material aid, assistance, or advice with respect to the listed transaction. That threshold in the case of a listed transaction is reduced to $10,000 if substantially all of the tax benefits are provided to natural persons (looking through any partnerships, S corporations, or trusts), or to $25,000 for any other transaction. *See* § 301.6111–3(b)(3)(i)(B). The regulations under section 6111 provide that gross income includes all fees for a tax strategy, for services for advice (whether or not tax advice), and for the implementation of a reportable transaction. *See* § 301.6111–3(b)(2)(ii). However, a fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. *See* § 301.6111–3(b)(3)(ii).

IV. Effect of Participating in Listed Transaction Described in Proposed § 1.6011–15(b)

Participants required to disclose these transactions under § 1.6011–4 who fail to do so will be subject to penalties under section 6707A. Such disclosure also must include any gift tax consequences. *See* § 25.6011–4. Participants required to disclose these transactions under § 1.6011–4 who fail to do so also are subject to an extended period of limitations under section 6501(c)(10). Material advisors required to disclose these transactions under section 6111 who fail to do so are subject to penalties under section 6707. Material advisors required to maintain lists of investors under section 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) are subject to penalties under section 6708(a). In addition, the IRS may impose other penalties on persons involved in these transactions or substantially similar transactions, including accuracy-related penalties under section 6662 or section 6662A, the penalty under section 6694 for understatements of a taxpayer's liability by a tax return preparer, the penalty under section 6700 for promoting abusive tax shelters, and the penalty under section 6701 for aiding and abetting understatement of tax liability.

In addition, material advisors have disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding § 301.6111–3(b)(4)(i) and (iii), material advisors are required to disclose only if they have made a tax statement on or after [DATE 6 YEARS BEFORE DATE OF PUBLICATION OF FINAL RULE].

Because the IRS will take the position that taxpayers are not entitled to the purported tax benefits of the listed transactions described in the proposed regulations, taxpayers who have filed tax returns taking the position that they were entitled to the purported tax benefits should consider filing amended returns or otherwise ensure that their transactions are disclosed properly.

V. Role of Charitable Remainderman in the Transaction

As stated in section 1 of this Explanation of Provisions, the

transaction described in proposed § 1.6011–15(b) attempts to use a CRAT under section 664 to permanently avoid recognition of ordinary income and/or capital gain on the sale of contributed property having a FMV in excess of its basis. Under the mandatory requirements of section 664(d), a trust does not qualify as a CRAT unless, following the termination of the annuity payments described in section 664(d)(1)(A), the Remainder Interest is to be transferred to or for the use of an organization described in section 170(c).

A. Charitable Remainderman as a Party to a Transaction Under Section 4965

As stated in section III of the Background, section 4965 provides, in part, that, if a transaction is a prohibited tax shelter transaction at the time a tax-exempt entity (which includes an organization described in section 170(c), other than the United States) becomes a party to the transaction, the entity must pay the section 4965 tax for the taxable year and any subsequent taxable year as determined under section 4965(b)(1). Section 4965(e)(1) provides in part that the term ''prohibited tax shelter transaction'' means any listed transaction (within the meaning of section 6707A(c)(2)). A tax-exempt entity that is a party to a prohibited tax shelter transaction generally is subject to various reporting and disclosure obligations. Additionally, an entity manager is subject to the entity manager tax imposed by section 4965(a)(2) if the entity manager approves the tax-exempt entity as a party (or otherwise causes the entity to be a party) to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction. Section 53.4965–4(a) provides in part that a tax-exempt entity is a ''party'' to a prohibited tax shelter transaction if it facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status.

The trust used in a transaction identified as a listed transaction in proposed § 1.6011–15(a) would not qualify as a CRAT unless the entire Remainder Interest is required to be transferred to or for the use of a Charitable Remainderman. Thus, the tax-exempt entity that the CRAT designates for the Remainder Interest facilitates the transaction by reason of its tax-exempt status because, absent that status, the CRAT would not satisfy the mandatory requirement of section 664(d)(1)(C). Accordingly, that designated tax-exempt entity would meet the definition of a party to a prohibited tax shelter transaction in § 53.4965–4(a)(1).

However, notwithstanding the general rule in § 53.4965–4(a), § 53.4965–4(b) provides that published guidance may identify, by type, class, or role, which tax-exempt entities will or will not be treated as parties to a prohibited tax shelter transaction. The Treasury Department and the IRS understand that, in a transaction described in proposed § 1.6011–15(b), an organization described in section 170(c) that is designated as the Charitable Remainderman might not become aware of its Remainder Interest in the purported CRAT until it receives a distribution from the trust. In that situation, it may be difficult for the organization described in section 170(c) to determine when section 4965 excise taxes and related reporting requirements apply. For this reason, these proposed regulations would provide that an organization described in section 170(c) that the purported CRAT designates as the recipient of the Remainder Interest will not be treated as a party under section 4965 to the listed transaction described in proposed § 1.6011–15 solely by reason of its status as a Charitable Remainderman.

B. Participation by a Charitable Remainderman

As stated in section II of the Background, a taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in this proposed regulation. *See* § 1.6011–4(c)(3)(i)(A). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance also may identify types or classes of persons that will not be treated as participants in a listed transaction. In general, the Treasury Department and the IRS do not expect that an organization described in section 170(c), whose only role or interest in the transaction described in these proposed regulations is as a Charitable Remainderman, would meet the definition of a participant under § 1.6011–4(c)(3)(i)(A). Nevertheless, to avoid potential uncertainty, the proposed regulations provide that an organization described in section 170(c) that the purported CRAT designates as the recipient of the Remainder Interest is not treated as a participant in the listed transaction described in these proposed regulations solely by reason of its status as a Charitable Remainderman.

C. Charitable Remainderman as a Material Advisor

As stated in section III of the Background, a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount for the material aid, assistance, or advice. *See* section 6111(b)(1)(A). The regulations provide that gross income includes all fees for a tax strategy, for services or advice (whether or not tax advice), and for the implementation of a reportable transaction. However, a fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. *See* § 301.6111–3(b)(3)(ii)).

The Treasury Department and the IRS request comments on whether the Charitable Remainderman ever provides material aid, assistance, or advice with respect to transactions described in proposed § 1.6011–15(b) and the nature of the services being provided. The Treasury Department and the IRS also request comments on what fees the Charitable Remainderman receives, either directly or indirectly, for providing such material aid, assistance or advice.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be made available at *https://www.regulations.gov.* Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for July 11, 2024, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. Due to the building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants alternatively may attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to

each topic by May 24, 2024. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be free of charge at the hearing. If no outline of topics to be discussed at the hearing is received by May 24, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number (REG–108761–22) and the language ''TESTIFY In Person''. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–108761–22.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–108761–22 and the language ''TESTIFY Telephonically''. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–108761–22.

Individuals who want to attend the public hearing in person without testifying also must send an email to *publichearings@irs.gov* to have their names added to the building access list. The subject line of the email must contain the regulation number REG–108761–22 and the language ''ATTEND in Person''. For example, the subject line may say: Request to ATTEND Hearing In Person REG–108761–22. Requests to attend the public hearing must be received by 5 p.m. ET on July 9, 2024.

Individuals who want to attend the public hearing by telephone without testifying also must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of email must contain the regulation number (REG–108761–22 and the language ''ATTEND Hearing Telephonically''. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–108761–22. Requests to attend the public hearing must be received by 5 p.m. ET on July 9, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing, please contact the Publication and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) at least July 8, 2024.

Applicability Date

Proposed § 1.6011–15 would identify charitable remainder annuity trust transactions described in proposed § 1.6011–15(b), and transactions that are substantially similar to those transactions, as listed transactions, effective as of the date the final regulations are published in the **Federal Register**.

Special Analyses

I. Paperwork Reduction Act

The estimated number of taxpayers impacted by these proposed regulations is between 50 to 100 per year. No burden on these taxpayers is imposed by these proposed regulations. Instead, the collection of information contained in these proposed regulations is reflected in the collection of information for Forms 8886 and 8918 that have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545–1800 and 1545–0865.

To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the updated burden estimates for Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 already is contained in the burden associated with the control number for the forms and remains unchanged.

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.

II. Regulatory Flexibility Act

When an agency issues a proposed rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (Act) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' that ''describe[s] the impact of the proposed rule on small entities.'' 5 U.S.C. 603(a). The term ''small entities'' is defined in 5 U.S.C. 601 to mean ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' which are also defined in 5 U.S.C. 601. Small business size standards define whether a business is ''small'' and have been established for types of economic activities, or industry, generally under the North American Industry Classification System (NAICS). *See* Title 13, Part 121 of the Code of Federal Regulations (titled ''Small Business Size Regulations''). The size standards look at various factors, including annual receipts, number of employees, and amount of assets, to determine whether the business is small. *See* Title 13, Part 121.201 of the Code of Federal Regulations for the Small Business Size Standards by NAICS Industry.

Section 605 of the Act provides an exception to the requirement to prepare an initial regulatory flexibility analysis if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the majority of the effect of the proposed regulations falls on trusts. Further, the Treasury Department and the IRS expect that the reporting burden is low; the information sought is necessary for regular annual return preparation and ordinary recordkeeping.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

III. Unfunded Mandates Reform Act

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

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule

does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. Regulatory Planning and Review

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

Statement of Availability of IRS Documents

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

Drafting Information

The principal author of these proposed regulations is Charles D. Wien, Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

* * * * *

Section 1.6011–15 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011 * * *

* * * * *

■ **Par. 2.** Section 1.6011–15 is added to read as follows:

§ 1.6011–15 Charitable Remainder Annuity Trust Listed Transaction.

(a) *In general.* Transactions that are the same as, or substantially similar to, a transaction described in paragraph (b) of this section are identified as listed transactions for purposes of § 1.6011–4(b)(2).

(b) *Charitable remainder annuity trusts.* A transaction is described in this paragraph (b) if:

(1) The grantor creates a trust purporting to qualify as a charitable remainder annuity trust under section 664(d)(1) of the Internal Revenue Code (Code);

(2) The grantor funds the trust with property having a fair market value in excess of its basis (contributed property);

(3) The trustee sells the contributed property;

(4) The trustee uses some or all of the proceeds from the sale of the contributed property to purchase an annuity; and

(5) On a Federal income tax return, the beneficiary of the trust treats the annuity amount payable from the trust as if it were, in whole or in part, an annuity payment subject to section 72 of the Code, instead of as carrying out to the beneficiary amounts in the ordinary income and capital gain tiers of the trust in accordance with section 664(b).

(c) *Participation*—(1) *In general.* A taxpayer has participated in a transaction identified as a listed transaction in paragraph (a) of this section if the taxpayer's tax return reflects tax consequences or a tax strategy described in this section as provided under § 1.6011–4(c)(3)(i)(A). These tax consequences include those tax consequences that would affect any gift tax return, whether or not such gift tax return was filed. *See* § 25.6011–4 of this chapter.

(2) *Treatment of charitable remainderman.* An organization described in section 170(c) of the Code that the purported Charitable Remainder Annuity Trust designates as a recipient of the remainder interest described in section 664(d)(1) is not treated as a participant under § 1.6011–4(c)(3)(i)(A) in the transaction described in this section solely by reason of its status as a recipient of the remainder interest described in section 664(d)(1).

(d) *Treatment of charitable remainderman under section 4965.* A tax-exempt entity (as defined in section 4965 of the Code) that is an organization described in section 170(c) and that the purported Charitable Remainder Annuity Trust designates as a recipient of the remainder interest described in section 664(d)(1) is not treated as a party to the transaction described in this section for purposes of section 4965 solely by reason of its status as a recipient of the remainder interest described in section 664(d)(1).

(e) *Applicability date.* This section's identification of transactions that are the same as, or substantially similar to, the transaction described in paragraph (b) of this section as listed transactions for purposes of § 1.6011–4(b)(2) is effective on [date of publication of final regulations in the **Federal Register**].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2024–06156 Filed 3–22–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2024–0177]

RIN 1625–AA08

Special Local Regulation; Red River, Shreveport, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation (SLR) for certain navigable waters of the Red River. This action is necessary to provide for the safety of life on these navigable waters near Shreveport, Louisiana, during high-speed powerboat races from May 24, 2024 through May 26, 2024. This proposed rulemaking would prohibit persons and vessels from being in the regulated unless authorized by the Captain of the Port Sector Lower Mississippi River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 9, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0177 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MSTC Lindsey Swindle, Waterways Management, U.S. Coast Guard; telephone 571–610–4197, email *Lindsey.M.Swindle@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On December 8, 2023, an organization notified the Coast Guard that it will be conducting high-speed powerboat races from 6 a.m. through 6 p.m. from May 24, 2024, through May 26, 2024. The races will take place between mile marker 228.1 and mile marker 228.8 on the Red River, Shreveport, LA, and involve approximately 55 powerboats ranging from 14 to 18 feet in length. No spectator craft will be allowed in the regulated area. The Captain of the Port Sector Lower Mississippi River (COTP) has determined that potential hazards associated with the high-speed powerboat race would be a safety concern for participants, participant vessels, and general public.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

The COTP is proposing to establish a SLR from 6 a.m. through 6 p.m. each day on May 24, 2024 through May 26, 2024. The SLR would cover all navigable waters from mile marker 228.1 to mile marker 228.8 on the Red River, Shreveport, LA. The duration of the zone is intended to ensure the protection of personnel, vessels, and the marine environment during this event. The proposed regulation would prohibit all persons and vessels, except those persons and vessels participating in the race, from entering, transiting through, anchoring in, or remaining within the area, unless authorized by the COTP or a designated representative. The Coast Guard will provide notice of the SLR and contact information by a Broadcast Notice to Mariners, and on-scene designated representatives. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation, which will impact mile marker 228.1 to mile marker 228.8 on the Red River for 12 hours each day. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the regulated area, breaks in the racing will provide vessels opportunity to transit, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1,

associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulation lasting approximately 12 hours on three separate days that will prohibit entry of persons or vessels during the Red River Rumble F1 Powerboat Showdown high-speed powerboat races. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0177 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T08–0177 to read as follows:

§ 100.T08–0177 Red River Rumble F1 Powerboat Showdown, Shreveport, LA.

(a) *Regulated area.* The regulations in this section apply to the following area: A special local regulation is established to encompass all waters of the Red River from mile marker 228.1 to mile marker 228.8.

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

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

Participant means all persons and vessels registered with the event sponsor as a participant in the race.

Spectator means all persons and vessels not registered with the event sponsor as participants or official patrol vessels.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by 314–269–2332. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via Broadcast Notice to Mariners and by on-scene designated representatives.

(d) *Enforcement period[s].* ''This section will be enforced each day from 6 a.m. to 6 p.m. each day from May 24, 2024, through May 26, 2024.

Dated: March 20, 2024.

Kristi L. Bernstein,

Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2024–06244 Filed 3–22–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0971]

RIN 1625–AA11

Regulated Navigation Area; NW Natural Gasco Sediment Site Field Pilot Study, Willamette River, Portland, Oregon

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Regulated Navigation Area for certain waters of the Willamette River. This action is necessary to preserve the integrity of sampling ports at the NW Natural Gasco Sediments Site Project Area on these navigable waters near Portland, Oregon. This proposed rulemaking would prohibit persons and

vessels in the designated area from activities that could disturb or damage the sampling ports unless authorized by the Captain of the Port Sector Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 24, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0971 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Carlie Gilligan, Waterways Management Division, U.S. Coast Guard; telephone 503–240–9310, email *SCRWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On September 26, 2023, an organization notified the Coast Guard that it will be requesting a Regulated Navigation Area (RNA) at the NW Natural Gasco Sediments Site Project Area located in the Willamette River in Portland, Oregon. This will preserve the integrity of the In Situ Stabilization and Solidification (ISS) Field Pilot Study (FPS) post-construction sampling ports placed over the site as part of the U.S Environmental Protection Agency (EPA) Superfund cleanup action. The Captain of the Port Sector Columbia River (COTP) has determined that a regulated navigation area would mitigate potential hazards at this site.

The purpose of this rulemaking is to ensure activities do not disturb the sampling ports. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a regulated navigation area at river mile 6.5 on the Willamette River, Portland, OR. The FPS consists of a 1,750 square foot area that will undergo ISS treatment. The duration of the zone is intended last in perpetuity or until the EPA and NW Natural agree to modify the footprint as part of a future final site remedy. No vessel or person would be permitted to disturb (*e.g.,* anchor, drag lines, trawling, motoring) the regulated navigation area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the RNA being limited in size and is outside the navigable channel.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated navigation area that prohibits certain maritime activities to protect the sampling ports. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0971 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.0971 to read as follows:

§ 165.0971 Regulated navigation area; NW Natural Gasco Sediments Site Field Pilot Study, Willamette River, Portland, OR.

(a) *Location.* The following area is a regulated navigation area (RNA): All navigable waters of the Willamette River, from surface to bottom, adjacent to the NW Natural Portland Gas Manufacturing (PGM) site, encompassed by a line connecting the following points beginning at 45°34′45.65″ N, 122°45′21.73″ W; thence to 45°34′45.32″ N, 122°45′22.00″ W; thence to 45°34′45.39″ N, 122°45′21.09″ W; thence to 45°34′45.06″ N, 122°45′21.36″ W; and back to the beginning point. These coordinates are based on North American Datum 83 (NAD 83). Geographically this location starts on the west bank of the Willamette River at approximately river mile 6.5.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Columbia River (COTP) in the enforcement of the safety zone.

(c) *Regulations.* In addition to the general RNA regulations in § 165.13, the following regulations apply to the RNA described in paragraph (a) of this section.

(1) Sediment disturbance activities including anchoring, drag lines, trawling and motoring are prohibited to ensure the treated sediment surface and sampling ports are not disturbed. The sampling ports must remain intact and undisturbed to avoid impacting the EPA-approved sampling. All vessels and persons are prohibited from anchoring, dredging, laying cable, dragging, seining, bottom fishing, conducting salvage operations, or any other activity which could potentially disturb the riverbed in the designated area. Vessels may otherwise transit or navigate within this area.

(2) The prohibition described in paragraph (b)(1) of this section does not apply to vessels or persons engaged in activities associated with remediation efforts in the NW Natural Gasco Sediment Site, provided that the Coast Guard Captain of the Port Sector Columbia River (COTP) is given advance notice of those activities by the U.S. Environmental Protection Agency (EPA).

(d) *Contact information.* If you observe violations of the regulations in this section, you may notify the COTP by email, at *SCRWWM@USCG.MIL,* or by phone, 503–240–9319.

Dated: March 19, 2024.

Charles E. Fosse,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 2024–06224 Filed 3–22–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 166 and 167

[Docket No. USCG–2019–0279]

RIN 1625–AC57

Shipping Safety Fairways Along the Atlantic Coast Public Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notification of public meeting and extension of comment period.

SUMMARY: The Coast Guard has decided to host a public meeting regarding the proposed establishment of shipping safety fairways along the Atlantic coast. In addition, the Coast Guard is extending the comment period on the proposed rule in order to allow participants in the public meeting sufficient time to prepare their comment submissions.

DATES: The comment period for the proposed rule published January 19, 2024, at 89 FR 3587, is extended. Comments should be received on or before May 17, 2024. The meeting will be held on April 17, 2024 at 6 p.m.

ADDRESSES: The meeting will be held at 101 Vera King Farris Drive, Galloway, NJ 08205 in the L-Wing Building, Classroom 112.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Brian Mottel, Coast Guard; telephone 206–815–4657, email *David.b.mottel2@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking (NPRM) on January 19, 2024, proposing the establishment of shipping safety fairways along the Atlantic coast. 89 FR 3587. The proposed rule is intended to protect traditional shipping routes as well as to help facilitate development on the outer continental shelf (OCS). Since publication, we've received multiple requests from commenters requesting further public engagement from the Coast Guard. The Coast Guard is committed to the meaningful participation of stakeholders in the rulemaking process and to receiving the highest quality input and expertise that the private sector has to offer. In that spirit, we have decided to host a public meeting to gather further information on the potential impacts of the proposed fairways.

The meeting will be hosted at Stockton University at 6 p.m. on April 17, 2024. The meeting will be held at 101 Vera King Farris Drive, Galloway, NJ 08205 in the L-Wing Building, Classroom 112. The meeting will consist of a brief presentation by the Coast Guard followed by the submissions of public comments. This is not a question-and-answer session, but an opportunity for the public to hear from the Coast Guard and to provide feedback on the proposed fairways.

This document also extends the comment period for the Shipping Safety Fairways along the Atlantic Coast NPRM for 30 days in order to allow the public to gather their thoughts following the public meeting. The extended comment period will close on May 17, 2024. This document is issued under authority found in 5 U.S.C. 552(a).

Dated: March 18, 2024.

K.J. Boda,

Deputy Director, Marine Transportation System.

[FR Doc. 2024–06225 Filed 3–22–24; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 24–85, 24–86; FCC 24–31; FR ID 209752]

Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024; Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopted a Notice of Proposed Rulemaking (NPRM) that seeks comments on revising the regulatory fees for space and earth station payors for fiscal year (FY) 2024.

DATES: Submit comments on or before April 12, 2024; and reply comments on or before April 29, 2024.

ADDRESSES: You may submit comments, identified by MD Docket No. 24–85 and MD Docket No. 24–86, by any of the following methods:

- *Electronic Filers.* Comments may be filed electronically using the internet by accessing the ECFS, *https://apps.fcc.gov/ecfs.*
- *Paper Filers.* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Stephen Duall, Space Bureau, at (202) 418–1103 or *Stephen.Duall@fcc.gov;* Roland Helvajian, Office of the Managing Director, at (202) 418–0444 or *Roland.Helvajian@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), in MD Docket Nos. 24–85 and 24–86; FCC 24–31, adopted and released on March 13, 2024. The full text of this document is available at *https://docs.fcc.gov/public/attachments/FCC-24-31A1.pdf.*

Comment Filing Requirements. Interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

Providing Accountability Through Transparency Act. The Providing Accountability Through Transparency Act, Public Law 118–9, requires each

agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of the *NPRM* is available at *https://www.fcc.gov/proposed-rulemakings.*

Ex Parte Presentations. The Commission will treat this proceeding as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Regulatory Flexibility Analysis. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the proposed rule and policy changes contained in the *NPRM.* The IRFA is set forth in appendix A of the FCC Document *https://docs.fcc.gov/public/attachments/FCC-24-31A1.pdf* and a summary is included below. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *NPRM* indicated on the **DATES** section of this document and must have a separate and distinct heading designating them as responses to the IRFA.

Synopsis

I. Introduction

1. Pursuant to section 9 of the Communications Act of 1934, as amended, (Communications Act or Act), the Commission undertakes the Notice of Proposed Rulemaking (*NPRM*) to commence the assessment of regulatory fees for space and earth station payors for fiscal year (FY) 2024.

2. In January 2023, the Commission reorganized its International Bureau into: (1) a Space Bureau to handle policy and licensing matters related to satellite communications and other in-space activities under the Commission's jurisdiction; and (2) an Office of International Affairs to handle issues involving foreign and international regulatory authorities as well as international telecommunications and submarine cable licensing. When the Commission adopted regulatory fees for Fiscal Year (FY) 2023 in the *FY 2023 Regulatory Fees Report and Order,* 88 FR 63694 (Sept. 15, 2023), it noted that it would be the last year for doing so for the International Bureau, and that the creation of the Space Bureau and Office of International Affairs could result in changes in the assessment of regulatory fees due to changes in Full Time Equivalents (FTEs), due to increased oversight on various relevant industries. One FTE, sometimes also referring to a Full Time Employee, is a unit of measure equal to the work performed annually by a full-time person (working a 40-hour workweek for a full year) assigned to the particular job, and subject to agency personnel staffing limitations established by the Office of Management and Budget (OMB). In particular, the *FY 2023 Regulatory Fees Report and Order* stated that an examination of the regulatory fees and categories for non-geostationary orbit (NGSO) space stations would be useful in light of changes resulting from the creation of the Space Bureau. The Commission anticipated that the changes in the industry that resulted in the creation of the Space Bureau would likely also result in changes in the relative FTE burdens between and among space and earth station fee payors. Accordingly, the Commission found that it would be more efficient to seek comment on proposals to examine the categories of regulatory fees for NGSO space stations at the same time as other proposals that might arise as part of a ''more holistic review'' of the fee burden of the Space Bureau in FY 2024.

3. The *NPRM* commences that examination and review of regulatory fees for space and earth station payors that are regulated by the new Space Bureau. Specifically, the Commission seeks comment on a range of proposed changes related to the assessment of regulatory fees for space and earth stations under its existing methodology.

4. In addition, the Commission proposes an alternative methodology for assessing space station regulatory fees. Unlike the proposals made to adjust the existing methodology, the alternative methodology is a more comprehensive departure from the way that space station regulatory fees have been assessed since 1994 in that it eliminates the separate categories of regulatory fees for Geostationary Orbit (GSO) and NGSO space stations, as well as existing subcategories for NGSO space stations. It would retain the existing separate regulatory fee category for small satellites and spacecraft licensed under 47 CFR 25.122 through 25.123. For the reasons discussed in the *NPRM,* this alternative methodology may be more fair, administrable, and sustainable than the existing methodology, and the Commission seeks comment on all aspects of this alternative approach.

II. Background

A. Communications Act Requirements

5. Section 9 of the Communications Act of 1934, as amended, 47 U.S.C. 159, obligates the Commission to assess and collect regulatory fees each year in an amount that can reasonably be expected to equal the amount of its annual salaries and expenses (S&E) appropriation. In accordance with the statute, each year, in an annual fee proceeding, the Commission proposes adjustments to the prior fee schedule under 47 U.S.C. 159(c) to reflect unexpected increases or decreases in the number of units subject to the payment of such fees, and result in the collection of the amount required by the Commission's annual appropriation. Pursuant to 47 U.S.C. 159A(b)(1) of the Act, the Commission must notify Congress immediately upon adoption of any adjustment. The Commission will also propose amendments to the fee

schedule under 47 U.S.C. 159(d) if the Commission determines that the schedule requires amendment so that such fees reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities. Pursuant to 47 U.S.C. 159A(b)(2), the Commission must notify Congress at least 90 days prior to making effective any amendments to the regulatory fee schedule.

6. The Commission initiates the proceeding to seek comment on possible changes to the existing methodology for assessing space and earth station regulatory fees, ahead of its annual Commission-wide regulatory fee proceeding for the fiscal year, to adopt amendments to the existing space and earth station regulatory fee categories or to adopt new regulatory fee categories in time for those changes to be effective for FY 2024. Because changes to the regulatory fee categories require 90-day prior notification to Congress to be effective for FY 2024, any changes to the space and earth station regulatory fee categories would have to be adopted and notification of the changes would have to be timely provided to Congress to become effective before the end of FY 2024. While the Commission initiates the examination and review of the existing methodology for assessing regulatory fees for space and earth station payors in *NPRM,* it will propose and finalize the regulatory fee rates for space and earth station payors as part of its annual Commission-wide regulatory fee proceeding for FY 2024. Commenters will have an opportunity in that proceeding to provide comments on the proposed regulatory fee rates for space and earth station payors.

B. Space and Earth Station Regulatory Fees and Methodology

7. The existing schedule of regulatory fees for space and earth station payors is contained in 47 CFR 1.1156. There are four current categories of space station payors: Space Stations (Geostationary Orbit); Space Stations (Non-Geostationary Orbit)—Less Complex; Space Stations (Non-Geostationary Orbit)—Other; and Space Station (Small Satellites). ''Less Complex'' NGSO systems are defined as NGSO satellite systems planning to communicate with 20 or fewer U.S. authorized earth stations that are primarily used for Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS). ''Small Satellites'' are space stations licensed pursuant to the streamlined small satellite process contained in 47 CFR 25.122. The Space Stations (Small Satellites) category also includes ''small spacecraft'' licensed pursuant to the analogous streamlined procedures of 47 CFR 25.123. In addition, there is a single category of earth station payors—Earth Stations: Transmit/Receive & Transmit only. Since the Commission's fiscal year 2020 proceeding, non-U.S. licensed space stations granted market access to the United States through a Petition for Declaratory Ruling or through earth station licenses are subject to regulatory fees.

8. For FY 2023, the regulatory fee amount per category of space and earth station payor were as follows:

Fee category	FY 2023 fee amount
Space Stations (Geostationary Orbit)	$117,580
Space Stations (Non-Geostationary Orbit)—Less Complex	130,405
Space Stations (Non-Geostationary Orbit)—Other	347,755
Space Stations (per license/call sign in non-geostationary orbit) (Small Satellites)	12,215
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration)	575

9. Under the existing methodology of calculating regulatory fees for space and earth station payors, the Commission multiplies the space station and earth station FTE allocation percentages by the target goal of collections (overall total amount to collect), respectively, to determine the amount to be collected from each regulatory fee category. Since 2020, the space station allocation percentages reflect an 80/20 split between the GSO and NGSO regulatory fee categories, respectively. The amount to be collected by the space station and earth station regulatory fee categories, divided by the projected number of units, determines the fee rate. There are several space station regulatory fee categories—GSO, NGSO—Other, NGSO—Less Complex, and small satellites—and each of these regulatory fee categories has its own respective FTE allocation percentage to determine the fee rate. The small satellite fee rate is calculated by taking the average of the calculated fee rate for space stations in the NGSO—Other and NGSO§Less Complex categories. The average fee rate is then multiplied by 5% (1/20) and rounded to the nearest $5 to determine the small satellite fee rate. The small satellite fee rate is then multiplied by the number of small satellite units, and the amount derived is divided by an 80/20 split and reduced from the target goals of NGSO—Other and NGSO—Less Complex, respectively. After reducing the NGSO—Other and NGSO—Less Complex target goal amounts, the fee rates for both of these NGSO regulatory fee categories are re-calculated (dividing the revised target goal by its respective unit count) to reflect a slightly lower fee rate.

10. The units of assessment for GSO and NGSO space station regulatory fee categories differ in that the fee for Space Stations (Geostationary Orbit) is assessed per satellite in geostationary orbit, whereas the fee assessed for Space Stations (Non-Geostationary Orbit), either ''less complex'' or ''other,'' is per ''system'' of satellites, with no limit on the number of satellites per system. Fees for Space Stations (Small Satellites) are assessed per license/call sign, which can include up to 10 satellites or spacecraft. This means that the unit of regulatory fees for GSO space stations is a single satellite, whereas the unit of regulatory fees for NGSO space stations can include tens, if not thousands, of satellites. Thus, although the single highest regulatory fee for space stations for FY 2023 is $347,755 for Space Stations (Non-Geostationary Orbit)—Other, this fee reflects the regulatory burden associated with the licensing and oversight of numerous space stations in the system, usually subject to processing rounds, complex spectrum sharing arrangements, and providing global coverage. By contrast, the per unit fee for Space Stations (Geostationary Orbit) for FY 2023 is lower at $117,580, but an operator providing global coverage may be paying regulatory fees on multiple space stations in geostationary orbit, which could result in annual regulatory fee payments by a single fee payor in aggregate far greater than the regulatory fee for Space Stations (Non-Geostationary Orbit)—Other providing similar services and coverage. Earth station regulatory fees are assessed ''per license or registration,'' and each license

or registration may include a single earth station, or multiple earth stations.

11. In addition, regulatory fees are assessed solely on ''operational'' space stations. A space station is considered to be operational when the operator reports under the Commission's reporting requirements for space stations that the space station or stations have been successfully placed into orbit and that operations conform to the terms and conditions of the space station authorization. Similarly, if an earth station's license limits its operational authority to a particular satellite system, a regulatory fee payment is not due until the first satellite in that system becomes operational.

12. For FY 2023, the number of units for the earth station fee category was 2,900. The number of units for Space Stations (Geostationary Orbit) was 136; the number of units for Space Stations (Non-Geostationary Orbit)—Other was nine; the number of units for Space Stations (Non-Geostationary Orbit)—Less Complex was six; and the number of units for Space Stations (Small Satellites) was seven. These unit counts and fees resulted in a total expected regulatory fee revenue of $21,656,110 from space and earth station payors for FY 2023, which is the sum of $1,667,500 expected to be paid by earth station payors (7.69% of all space and earth station regulatory fees), $15,990,880 expected to be paid by Space Stations (Geostationary Orbit) (73.84%), $3,129,795 expected to be paid by Space Stations (Non-Geostationary Orbit)—Other (14.45%), $782,430 expected to be paid by Space Stations (Non-Geostationary Orbit)—Less Complex (3.61%), and $85,505 expected to be paid by Space Stations (Small Satellites) (0.39%).

III. Discussion

A. Space Bureau FTEs

13. Pursuant to 47 U.S.C. 159(d), the Commission's methodology for assessing regulatory fees must reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities. The Commission first sets forth the anticipated number of full-time equivalent number of employees, or FTEs, that will be in the new Space Bureau for purposes of assessing regulatory fees for FY 2024. The Commission previously anticipated that the changes in the satellite industry, which led to the reorganization of the International Bureau into the Space Bureau and the Office of International Affairs, might result in a larger number of FTEs devoted to space and earth station licensing, regulation, industry analysis, and oversight due to increased regulatory complexity that resulted from technological changes in the industry. Accordingly, the Commission stated that it would closely review the Space Bureau and Office of International Affairs FTEs to determine the appropriate number of FTEs in each entity as a result of the reorganization and how they will be apportioned among the different services.

14. The Commission's Human Resources Management office provided initial data identifying 54 FTEs in the Space Bureau to be counted for FY 2024. The Commission anticipates that these FTEs will be categorized as direct FTEs, with the exception of a small number of FTEs that work exclusively, or nearly exclusively, on administrative activities, with the staff of the Office of International Affairs on covering International Telecommunications Union (ITU) World Radiocommunications Conference (WRC) agenda items, or with the staff of the Commission's Office of Engineering & Technology on experimental licenses involving space or earth stations. The Commission expects such FTEs to be categorized as indirect FTEs, since such work does not focus on the oversight and regulation of a specific category of regulatory fee payors, but instead benefits the Commission, the telecommunications industry, or the public as a whole, or in the case of work done on experimental licenses, is in furtherance of licenses that are not subject to a regulatory fee. The Commission also anticipates that a small number of FTEs from the Office of Economic and Analytics and the Public Safety and Homeland Security Bureau will be attributed as direct FTEs to the Space Bureau. For the sake of efficiency, the Commission will make its final proposals regarding the Space Bureau's total share of all Commission direct FTEs, as part of a notice of proposed rulemaking to be released at a later date for the Commission-wide assessment of regulatory fees for FY 2024.

15. Nonetheless, the Commission anticipates that the number of direct FTEs in the Space Bureau for FY 2024 will be greater than the 28 direct FTEs that were allocated to the International Bureau for FY 2023. Based on initial estimates, the Space Bureau FTEs could account for 10.76% of all Commission direct FTEs for FY 2024, compared with the International Bureau accounting for 7.77% in FY 2023. The Commission also expects that space and earth station payors will pay significantly more in regulatory fees in FY 2024 than in FY 2023. This is chiefly because the Commission anticipates there will be more direct FTEs in the Space Bureau attributable to space and earth station fee payors than there were in the International Bureau, due to the increased regulatory complexity and oversight required, which will result in a larger percentage of overall regulatory fees being allocated to the Space Bureau, assuming there is no offsetting increase in the number of FTEs in other core bureaus and offices. Accordingly, there is increased importance in examining how FTEs are apportioned among the categories of Space Bureau fee payors to ensure that the fee apportionment methodology is administrable, fair, and sustainable.

B. Space Station Fee Proposals

1. Allocation Between GSO and NGSO Space Stations

16. If the existing methodology for assessing regulatory fees for space stations is maintained, the Commission proposes to change the allocation of the regulatory fees between GSO and NGSO fee payors to reflect more accurately the apportionment of current FTE work between these two classes of regulatory fee payors. Under the existing allocation adopted in 2020, 80% of space station regulatory fees are allocated to GSO space station fee payors and 20% of the space station regulatory fees to NGSO space station fee payors. For the reasons stated in the *NPRM,* the Commission proposes to change this allocation to 60% of space station regulatory fees being allocated to GSO space station payors and 40% to NGSO space station payors.

17. In proposing this change in allocation, the Commission employs the same methodology that was used by the Commission in 2020 in adopting the ''80/20'' split between GSO and NGSO space station fee payors. Specifically, the Commission focuses on three factors that collectively reflect its oversight of GSO and NGSO operators: the number of applications processed, the number of changes made to the Commission's rules, and FTEs devoted to oversight of each category of operators.

18. First, using the advanced search function of the International Communications Filing System (ICFS), the Commission identified all applications for space stations (service type: SAT) filed during the three most recent fiscal years (that is, FY 2021–2023) for both GSO (class of service:

SSG) and NGSO (class of service: SSN). A total of 526 distinct applications for space stations were filed during this time period, with 322 applications being filed for GSO space stations (61%) and 204 applications for NGSO space stations (39%). Thus, the number of applications received during this three-year period supports a larger allocation of FTE time to GSO fee payors than to NGSO fee payors, but in a narrower range than the current 80/20 split.

19. Second, using compiled data through a search of the FCC's Electronic Comment Filing System (ECFS) and a cross check of items on the web pages of the FCC and the International Bureau/Space Bureau for the last three fiscal years, the Commission identified docketed proceedings originating from the International Bureau's Satellite Division, or from the Space Bureau, and considered to the involvement of GSO and NGSO space stations in each proceeding. The Commission analyzed the data to estimate whether a particular docketed proceeding involved GSO or NGSO space station payors, or both. It did not count docketed proceedings for transfer of control or assignment applications or other docketed proceedings that did not make changes to the Commission's rules. It included, however, a docketed proceeding to modify the conditions relating to the International Telecommunications Satellite Organization placed on the licenses of a GSO space station operator, even though it was not a rulemaking proceeding, because it involved changes to the conditions on a large number of space station licenses that required significant FTE resources to process.

20. The Commission identified 16 proceedings during FY 2021–2023, of which 8 substantively involved GSO space stations (50%) and 12 substantively involved NGSO space stations (75%). Accordingly, the data presented suggests that there were more rulemakings substantively involving NGSO space stations than GSO space stations. The Commission notes that quantifying only the most recent rulemaking activities does not take into account past rulemakings that are of continued relevance to space stations and are administered by Commission FTEs either through licensing, interpretation and application of those rules in other proceedings, or in consultation with the space station regulatees. Thus, attributing a value to rulemaking activities directly is not an exercise in scientific precision, but rather an exercise in reasonable analysis and a mechanism to verify the other data the Commission reviews. On balance, however, the Commission tentatively concludes that these rulemaking data support a greater allocation of regulatory fees to NGSO space station payors than is currently the case.

21. Third, the Commission considered whether it could examine FTE activities directly, but although there has been a change in the number of FTEs attributable to satellite regulatory activities due to the creation of the Space Bureau, it remains challenging to segregate the time spent by FTEs on work done on GSO versus NGSO matters. As was the case in the International Bureau, staff time spent in the Space Bureau on authorizations and rulemakings may benefit both categories of satellite operations. Based on its experience and judgement, the Commission estimates as closely as possible the relative percentage of FTEs that are attributable to benefitting either GSO or NGSO systems based on the factors above.

22. While there are issues of fact, law, engineering, and the physics of electromagnetic propagation that may be unique to GSO or NGSO space stations, many issues that Space Bureau staff work on are not segregable in a manner that is beneficial to clearly apportioning FTE time between GSO and NGSO regulatory fee categories. Taking all of the foregoing factors and data into consideration, the Commission tentatively concludes, however, that the GSO/NGSO ratio should be adjusted to reflect that GSO space stations derived roughly 60% of the benefit from the Commission's regulatory efforts and NGSO space stations derived roughly 40%. Accordingly, for FY 2024, the Commission proposes that GSO and NGSO space stations will be allocated 60% and 40% of space station regulatory fees, respectively. The Commission seeks comment on this tentative conclusion and proposal.

2. Allocation Between NGSO—Other and NGSO—Less Complex

23. If the existing methodology for assessing regulatory fees for space stations is maintained, the Commission proposes to maintain the existing allocation of the regulatory fee burden between ''Space Stations (Non-Geostationary Orbit)—Less Complex'' and ''Space Stations (Non-Geostationary Orbit)—Other.'' Currently, 20% of NGSO space station regulatory fees are allocated to Space Stations (Non-Geostationary Orbit)—Less Complex and 80% are allocated to Space Stations (Non-Geostationary Orbit)—Other fee payors. As discussed elsewhere in the *NPRM,* the Commission has defined ''less complex'' NGSO systems as NGSO satellite systems planning to communicate with 20 or fewer U.S. authorized earth stations that are primarily used for EESS and/or AIS. The Commission has concluded that EESS systems are less burdensome to regulate than other types of services when the systems plan to communicate with 20 or fewer earth stations. NGSO satellite systems outside of this definition are included in the NGSO ''other'' fee category, unless they qualify as ''small satellites'' under Commission rules and are included in the regulatory fee category for small satellites.

24. The Commission tentatively concludes that there have not been any significant changes to the amount of FTE burdens allocated between these two fee categories since the ''20/80'' split of regulatory fees between NGSO ''less complex'' and NGSO ''other'' subcategories was adopted in 2021. As was the case in 2021, the Commission considers its experience and analysis of the time that FTEs in the International Bureau and the Space Bureau devote to oversight and regulation of ''less complex'' and ''other'' NGSO systems. Specifically, now—as then—the Commission considers the number of applications processed, the number of changes made to the Commission's rules, and the number of FTEs working on oversight for each category of operators. This methodology is the same as used for determining the allocation of regulatory fees among GSO and NGSO space station fee payors. In evaluating the FTE time devoted to the ''less complex'' and ''other'' subcategories, the Commission considers its adjudicatory role in connection with different types of NGSO systems, which is typically more intensive for those systems authorized as part of processing rounds. The Commission also considers the number of rulemakings over the last three fiscal years, as well as current rulemakings, and which types of NGSO systems are implicated in those rulemaking activities.

25. Based on its experience and judgement, the Commission estimates as close as possible the relative percentage of FTE time attributable to oversight of each subcategory of NGSO space stations. Its examination does not reveal any rulemaking proceedings in the last three fiscal years that are specific to EESS space stations eligible for the ''less complex'' NGSO subcategory, but did reveal several rulemakings in that same period specific to NGSO ''other'' systems. Similarly, an examination of applications filed over the previous three fiscal years (FY 2021–2023) shows that 44 NGSO applications out of 204 NGSO applications were by systems

categorized as NGSO ''less complex'' (22%). The Commission's consideration of activities engaged in by staff and the time spent on oversight of different NGSO systems does not indicate any change from its consideration in 2021, which resulted in a determination that NGSO ''other'' were the majority beneficiaries of FTE efforts.

26. The Commission recognizes the considerable challenge of segregating the time spent by Space Bureau staff among the subcategories of NGSO space stations, nonetheless the considerations above support the tentative conclusion that more FTE time is spent on the NGSO ''other'' subcategory than on the NGSO ''less complex'' subcategory. The number of applications in the NGSO ''less complex'' subcategory received over the last three fiscal years supports a tentative conclusion that the relative regulatory burden of such ''less complex'' space stations remains consistent with the current 20% allocation. The Commission seeks comment on this tentative conclusion.

27. The Commission does not propose at this time to revisit the definition of ''less complex'' NGSO space stations, which has been adopted and affirmed over the course of several regulatory fee rulemaking proceedings. As expressly recognized, however, the Commission does not foreclose the possibility of designating other categories of NGSO systems as ''less complex'' systems in the future if the Commission's experience supports a finding that its regulatory work for such systems is significantly less than those for other NGSO systems. The Commission's experience to date has not supported such a designation for other types of NGSO systems, and the Commission does not have a sufficient record to make proposals for such designations at this time.

3. Creation of Tiers of NGSO—Other

28. If the existing methodology for assessing regulatory fees for space stations is maintained, the Commission proposes to divide the existing regulatory fee subcategory of ''Space Stations (Non-Geostationary Orbit)—Other'' into two tiers: ''Large Constellations'' of more than 1,000 authorized space stations; and ''Small Constellations'' of 1,000 or fewer authorized space stations. Currently, there is a single subcategory for NGSO ''other'' space station systems, which assesses the same annual regulatory fee—$347,755 for FY 2023—for all NGSO space station systems that are not categorized as ''less complex'' or ''small satellites.'' NGSO space station payors have argued that this ''one fee fits all'' assessment is unfair, as it assesses the same regulatory fee on an NGSO system consisting of 100 space stations as the fee assessed for an NGSO system consisting of potentially 10,000 or more space stations. The current single regulatory fee for all NGSO ''other'' space station payors resulted in requests by fee payors of smaller NGSO systems seeking to be assessed regulatory fees as NGSO ''less complex'' systems, even though the record at the time did not support a finding that the regulatory work for such systems was significantly less than other types of NGSO systems. The Commission uses this proceeding to explore whether its existing regulatory fee structure can be better tailored to the varying nature of NGSO systems and differing levels of licensing and regulatory oversight burdens required for these various systems, while maintaining a system that is fair, administrable, and sustainable.

29. The unit of assessment for Space Stations (Non-Geostationary Orbit), either ''less complex'' or ''other,'' is ''per system'' of satellites. This unit of assessment reflects the ability of applicants to apply for, and be authorized to operate, a ''system'' of NGSO space stations, with no limit on the number of space stations per system. Each initial application for authority is granted under a single ''call sign'' as a regulatory identifier. In many cases the Commission has assessed a single regulatory fee for an NGSO system consisting of space stations requested and authorized under different call signs. The assessment of regulatory fees for NGSO space stations on a ''per system'' basis extends back to the first time that the Commission assessed regulatory fees for ''Low Earth Orbit (LEO) Satellite Systems'' in 1996. The choice of a ''system'' as the unit of assessment for LEO satellites was based in the original text of 47 U.S.C. 159, which included a ''Schedule of Regulatory Fees'' that the FCC was required to assess and collect, until amended by the Commission. The Schedule of Regulatory Fees included fee categories for ''Space Station (per operational station in geosynchronous orbit)'' and ''Space Station (per system in low-earth orbit).'' The Schedule of Regulatory Fees, however, was deleted from 47 U.S.C. 159 by the RAY BAUM's Act of 2018.

30. The sole exception made to assessment of NGSO space station regulatory fees on a ''per system'' basis is for small satellites, for which the Commission adopted a separate regulatory fee category in which small satellites are assessed on a ''per license/call sign'' basis. The Commission found that adopting the regulatory fee on a per-license basis would not only accurately reflect the increased oversight and regulation for these small satellite systems when an operator has multiple small satellite licenses, but also it would be more efficient and administrable because it avoids potential complications and additional FTE time spent in determining whether various sets of small satellites are part of the same system.

31. In creating the separate fee categories of ''less complex'' NGSO space stations and small satellites operating in non-geostationary orbit, the Commission has previously recognized that not all NGSO space stations are the same, and that different NGSO space stations can be assessed different regulatory fees based on the differing amount of FTE regulatory work is devoted to them, consistent with the statutory obligations of 47 U.S.C. 159. Accordingly, the default unit of fee assessment for NGSO space stations—the ''system''—by itself does not indicate the amount of regulatory fees to be recovered from a particular NGSO space station payor. Instead, the Commission has used other factors as proxies for the amount of regulatory work required for a category of fee payors. For ''less complex'' space stations, the Commission relied on the primary service to be provided (EESS or AIS) and the number if U.S.-licensed earth station planned for communications (20 or fewer) as proxies for other factors for determining whether a category of NGSO space station system involved less staff resources to license and regulate than NGSO space station ''other'' systems: whether processing rounds are required, whether the system will have a global presence, the range and intensity of spectrum needs, and the variety of frequency bands, technical issues, and services presented.

32. The Commission in the *NPRM* seeks to explore whether the number of space stations requested for an NGSO system could serve as a proxy for the Commission's regulatory burden, when combined with other factors that went into determining whether an NGSO system is, or is not, ''less complex'' for regulatory fee assessment purposes. Does a greater number of space stations authorized per system equate to greater staff burdens to license and regulate, if the greater number of space stations per system also correlates to the other factors relevant to NGSO systems that do not qualify for inclusion in the NGSO space stations ''less complex'' subcategory (that is, they fall within the ''other'' NGSO fee category because they

are subject to processing rounds, have a global presence, have significant spectrum needs, and present a variety of frequency bands, technical issues, and services)? If so, is it reasonable to assume that a greater number of space stations authorized per system would equate to greater amount of FTE time to license and regulate? Although the Commission has previously stated that number of space stations in an NGSO system does not always correspond to increased regulatory complexity, those statements were based on consideration of the regulatory impact of the number of space stations in isolation, not when considered in connection with the other factors relevant to non-''less complex'' NGSO space station systems. Is it a reasonable expectation that, if an NGSO space station system is not found to be ''less complex'' for regulatory fee assessment purposes, the amount of FTE resources needed to license and regulate that system increases as the number of space stations increases because, on average, the greater the number of space station considered, the greater the amount of spectrum resources required for the system, the greater complexity of spectrum sharing with other systems, the more complicated the orbital debris mitigation plan will be, and the greater number of earth stations required to support the space station system? The Commission seeks comment on this expectation.

33. Accordingly, if the Commission maintains the existing space station regulator fee methodology, it proposes to transform the existing ''Space Stations (Non-Geostationary Orbit)—Other'' category into a two-tiered category, with one tier for ''Large Constellations'' and one tier for ''Small Constellations.'' The proposal to create tiers of NGSO space station regulatory fees is not new, being first made in 1999. As recently as 2021 and 2020, the Commission was presented with proposals to assess NGSO space station regulatory fees based on the total number of satellites deployed, but it declined to do so because the evidence in the record at the time was insufficient to establish different fees for different sized NGSO space station systems. The Commission proposes to use the *NPRM* to establish such a record to evaluate the appropriateness of adopting regulatory fees for large and small NGSO systems. Although the Commission acknowledges that it is inherently challenging to establish the dividing line between such tiers, it proposes 1,000 space stations as the dividing number for large and small systems. The Commission seeks comment on this proposal. Is 1,000 the right number, or is there a different number, greater or less than 1,000, that better reflects the delineation in the amount of FTE burdens to license and regulate NGSO systems of variable sizes (for example, 500 space stations)?

34. If the Commission adopts the tiered approach for the NGSO space station ''other'' category under its existing methodology, it proposes to create two tiers, rather than three or more tiers, in order to facilitate administrability, because there are relatively few units within the existing NGSO space station ''other'' category, and dividing that category into many tiers with a narrow range of space stations per tier may result in only one payor being responsible for the entire cost of the tier, or there being no payor for a particular tier in a fiscal year, shifting the costs of that tier to payors in other tiers. Importantly, it may be harder to justify the difference in FTE burdens when tiers are more narrowly defined. The Commission tentatively concludes that a two-tiered approach will not only appropriately account for differences in regulatory burdens between NGSO space station systems of different sizes, but also provide a measure of consistency from one year to the next in the number of payors and the per unit fee. The Commission seeks comment on the proposal to use two tiers in its approach and its tentative conclusion that a two-tiered approach will result in greater administrability than a multi-tiered approach. The Commission also proposes that its tiered approach be based on the number of authorized space stations in a system, rather than the number of space stations that are operational in a system at the moment that regulatory fees for a particular fiscal year are assessed. This proposal is consistent with its proposal elsewhere in the *NPRM* that all regulatory fees be assessed on authorized, rather than operational, space and earth stations. The Commission seeks comment on this proposal.

35. The Commission proposes to divide the total NGSO—''other'' fees between the two subcategories on a 50/50 basis (that is, half of the NGSO ''other'' fees paid by ''large constellations'' and half paid by ''small constellations''). It acknowledges the difficulty in allocating regulatory fee burdens between ''large constellations'' and ''small constellations,'' because staff in the Space Bureau may work on both types of constellations and rulemaking proceedings often do not differentiate between large and small constellations. The Commission accordingly seeks comment on its proposal to divide the total NGSO—''other'' fees between small and large constellations on a 50/50 basis. If the fees are not divided on a 50/50 basis, what would be a more appropriate division and why? The Commission notes that although the total costs would be allocated evenly between ''large'' and ''small'' constellations, it expects that there will be a greater number of units in the ''small constellations'' tier than the ''large constellations'' tier, and that that number of units in the ''small constellations'' tier will increase in the future, thereby resulting in a smaller per payor fee for the ''small constellations'' tier for future years. By contrast, the Commission expects that there will be only two to three payors in the large constellation tier for FY 2024, and that it is unlikely that that number will increase substantially in the foreseeable future. The Commission seeks comment on this proposed division and its expectations.

26. The Commission finds that the proposal to create fee categories for NGSO large and small constellations would be an amendment as defined in 47 U.S.C. 159. Such an amendment must be submitted to Congress at least 90 days before it becomes effective pursuant to 47 U.S.C. 159A(b)(2).

27. The Commission also seeks comment on other possible proxies that might reasonably equate with the share of FTE burdens associated with each system within the ''Space Stations (Non-Geostationary Orbit)—Other'' category, as alternatives to the 50/50 two-tiered approach proposed elsewhere in the *NPRM.* Other possible proxies include assessing regulatory fees for NGSO space station ''other'' using any of the following individual metrics: (1) per space station; (2) per subscriber; (3) per unit of spectrum authorized; (4) per class of service provided; and (5) per unit of on-orbit mass. The *NPRM* describes each possible proxy.

38. *Per Space Station.* Under this metric, the overall FTE burden of a NGSO ''other'' system would be proxied on the basis of the number of authorized space stations in the system, without utilizing a tiered system. The fee would be assessed on a per space station basis, with the total fee amount attributable to Space Stations (Non-Geostationary)—Other being divided by the number of space stations authorized in that category to establish a per space station fee unit. Each space station in the system would add incrementally to the amount of regulatory fees paid by the system. This alternative avoids the situation where a system may exceed the number of space stations eligible for

the small constellation tier by only a few space stations, which will result in the system paying the substantially higher fee for large constellations. The alternative potentially presents the situation, however, where systems with a very large number of authorized space stations (for example, 20,000 or more) could effectively end up paying all, or nearly all, the regulatory fees for the NGSO ''other'' category, since the number of space stations in that system could be more than all other systems combined in that category. Such an outcome may not accurately reflect the FTE burdens imposed by the various payors of the NGSO space stations ''other'' category by substantially underrepresenting the amount of FTE resources spent on all other fee payors in the NGSO ''other'' category. Could this concern be addressed by setting a ''cap'' or ''ceiling'' on the number of authorized space stations for which regulatory fees would be assessed or having a decreasing fee for each additional space station? Although the Commission has previously disagreed with proposals to assess space station regulatory fees on a per space station basis, it nonetheless seeks comment on the use of number of space stations as an alternative metric for assessing the regulatory fee burden for each NGSO ''other'' system.

39. *Per Subscriber.* Under this alternative, regulatory fees for NGSO space stations ''other'' would be assessed on a per subscriber basis, possibly using tiers of subscribers. The Commission observes, however, that not all NGSO systems have subscribers, and it does not currently collect information regarding subscriber numbers. Thus, to utilize subscriber information a review of an additional information collection may be required in order to assess regulatory fees on this basis. The time required to obtain the approval and collect the information would make the possibility of assessing fees on this basis for FY 2024 unlikely. The Commission also expects that it would require substantial FTE resources to calculate and assign fees for individual systems based on yearly subscriber numbers, which could in turn result in more FTEs being attributed to space station systems for regulatory fee recovery purposes. Furthermore, the Commission seeks comment on whether subscriber numbers are considered confidential by regulatees and, if so, how would that impact this approach?

40. *Per Unit of Spectrum Authorized.* An alternative proxy for the amount of FTE burden associated with a system in the NGSO space station ''other'' category could be the amount of spectrum resources authorized for the system. Systems that involve the use of a large amount of spectrum can require more FTE resources to license and regulate due to the likelihood of the increased need to coordinate with, and to address the interference concerns of, other spectrum users, compared to systems with smaller spectrum requirements. Thus, regulatory fees for NGSO space stations ''other'' could be assessed per unit of authorized spectrum, for example, per megahertz of spectrum authorized for the system. The Commission observes that the distinction between NGSO ''other'' and NGSO ''less complex'' already takes into account spectrum usage and ease of coordination in delineating between these two fee categories, so it is unclear what further delineation could be made within the NGSO space station ''other'' category based on authorized spectrum. In addition, not all spectrum is uniform in its complexity to license and regulate. For example, it may be easier to license and regulate an NGSO system operating in 500 megahertz of spectrum allocated to NGSO space station use on a primary basis than licensing and regulating an NGSO system operating in 20 megahertz of spectrum operating on a secondary or non-interference basis. The Commission has previously found that total bandwidth is not consistently indicative of the complexity of NGSO regulation. The *NPRM* seeks comment, however, on this alternative proxy and whether there any basis to question the Commission's previous conclusion that total bandwidth does not consistently reflect the complexity of NGSO regulation.

41. *Per Class of Service Provided.* Commenters in previous regulatory fee assessment proceedings have suggested that the type of services provided by NGSO space station systems could be used as a proxy for the amount of FTE resources dedicated to licensing and regulating such systems. In addition to the orbit used (GSO or NGSO), space stations are regulated by the type of service that they provide, for example mobile-satellite service (MSS), fixed-satellite service (FSS), direct broadcast satellite service (DBS), and satellite digital audio radio service (SDARS). The Commission has previously found that the type of service primarily being provided (EESS and/or AIS) was a relevant factor in determining whether an NGSO system was ''less complex'' for purposes of regulatory fee assessments, when combined with another factor (the number of earth stations authorized by the United States with which the system plans to communicate). The Commission has not found, however, that other types of satellite services warrant a determination that a NGSO system is ''less complex'' for regulatory fee purposes, although it did not rule out the possibility of doing so if the record supported such a finding. Although the Commission does not propose that any particular additional service be considered as a factor that an NGSO system is ''less complex'' for regulatory fee purposes, it may be possible to use the type of service provided as a proxy for FTE resources to delineate additional fee subcategories within the ''Space Stations (Non-Geostationary Orbit)—Other'' category. The *NPRM* seeks comment on this possibility. Comments should focus on the specific licensing and regulatory factors that differentiate the services and explain how the Commission would be able to allocate FTE time among these services. Comments should also address the administrability and sustainability of subcategories of regulatory fees in the NGSO space station ''other'' category based on the services provided by the space stations. For example, if a space station is authorized to provide multiple types of services, such as both FSS and MSS, how would it be determined which regulatory fee subcategory it belongs to? If it is determined based on the primary service that is authorized for a system, how should the Commission determine which service is primary? Would fee categories based on the service provided be relatively stable from year to year, or is it possible that there could be substantial changes in the number of fee payors in a service category year to year? Would every single service provided by a system need to be taking into account, or just the primary service? Would substantial FTE resources be needed to calculate and assign fees for individual systems based on primary services provided, which could in turn result in more FTEs being attributed to space station systems for regulatory fee recovery purposes?

42. *Per Unit of On-Orbit Mass.* Comments in previous years' regulatory fee assessment proceedings have suggested to use the mass of space stations as one proxy for an NGSO system's complexity. This suggestion is similar to the proposal in the *NPRM* to use of number of authorized space stations in an NGSO system as a proxy for regulatory burdens of systems in the NGSO space station ''other'' category, but considers the mass of the space stations in an NGSO system rather than the number of space stations. Thus, an NGSO system with 10 space stations with a mass of 1,000 kilograms each would pay more in regulatory fees than

a system of 100 space stations with a mass of 10 kilograms each. Under this proposal, it is assumed that space station mass is a proxy for other factors relevant to the amount of FTE work required for the licensing and regulation of the system, such as how much spectrum the system will use, the number of earth stations that the space stations will communicate with, and the complexity of a system's orbital debris mitigation plan. Although the Commission has previously found that space station mass is not a key driver of NGSO system complexity, the *NPRM* seeks comment on using space station mass as a proxy for the regulatory burden involved with an NGSO system. Is it correct that regulatory complexity increases in proportion to the mass of the space stations in an NGSO system? If so, should mass be assessed on a per space station or on an aggregate basis for all space stations in the system? Would mass be addressed on a ''wet'' basis (that is, including the mass of fuel and other consumables) or ''dry'' basis (that is, the mass of the space station without fuel and consumables)? Which basis—wet or dry—would more accurately reflect regulatory burdens for that system? Furthermore, the Space Bureau no longer collects information regarding the mass of a space station as part of the technical information required as part of an application for a space station authorization or a petition for U.S. market access. Thus, to utilize this information in assessing regulatory fees may require a review of an additional information collection under the Paperwork Reduction Act. The Commission also observes that the time required for such review, together with the time needed to collect the information, would rule out the possibility of assessing fees on this basis for FY 2024. The *NPRM* seeks comment on the consequences of this observation. Although the mass of a space station may be a factor disclosed in the orbital debris mitigation plan provided as a part of a space station application, the spacecraft mass is disclosed for the specific purpose of that analysis, and it is not clear whether it should be relied on for the purpose of assessing regulatory fees. Even if it may be possible to obtain information about the mass of space stations from third party sources, the Commission questions whether it is reasonable to rely on information obtained from such sources rather than from the fee payors themselves. The *NPRM* seeks comments on these issues. In addition, would substantial FTE resources be needed to calculate and assign fees for individual systems based on on-orbit mass, which could in turn result in more FTEs being attributed to space station systems for regulatory fee recovery purposes?

43. The Commission finds that the creation of fee categories for ''other'' NGSO space stations based on any of these other possible proxies would be an amendment as defined in 47 U.S.C. 159(d). Such an amendment must be submitted to Congress at least 90 days before it becomes effective pursuant to 47 U.S.C. 159A(b)(2).

4. Small Satellites

44. The Commission seeks comment on a proposal to set the regulatory fee for ''Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)'' for FY 2024 and future fiscal years at the level set for FY 2023 ($12,215), with only an annual adjustments to reflect the percentage change in the FCC appropriation, unit count, and FTE allocation percentage from the previous fiscal year. As explained elsewhere in the *NPRM,* the small satellite fee rate is calculated by taking the average of the calculated fee rate for space stations in the NGSO other and NGSO ''less complex'' categories, multiplying this average by 5% (1/20) and rounding it to the nearest $5. The small satellite fee rate is then multiplied by the number of small satellite units and deducted from the NGSO share of space station regulatory fees. This remaining amount is then divided between NGSO ''other'' and NGSO ''less complex'' based on an 80/20 split and reduced from the target goals of NGSO'' ''other'' and NGSO ''less complex'' respectively. Because the small satellite fee is based on the fees assessed for NGSO other and NGSO ''less complex'' categories, the increased fees expected for these two categories would lead to greatly increased fees for the small satellite regulatory fee category beginning in FY 2024.

45. The Commission's examination reveals that the number of applications, rulemaking procedures, and FTE staff working on small satellite matters has not increased greatly since the original methodology of assessing regulatory fees for small satellites was adopted. To the contrary, the Commission expects that the additional FTE resources allocated to the Space Bureau as a result of the reorganization of the International Bureau are not intensively involved in the licensing and regulatory oversight of small satellites, so that the overall percentage of FTE burden for small satellites may be less than the 1/20th burden of NGSO space stations. The *NPRM* seeks comment on this expectation and whether it supports the reduction of fees paid by small satellites. In addition, the proposals made in the *NPRM* to create subcategories within the NGSO ''other'' category for ''small'' and ''large'' constellations will add to the complexity of determining the appropriate marker for determining the appropriate share of FTE resources allocated to small satellites. The Commission proposes the administrability and sustainability of its regulatory fees for small satellites would be better served by treating them as it has historically treated the regulatory fees for earth stations—that is, a fixed regulatory fee that is adjusted from year-to-year on, rather than as a percentage of the Space Bureau's overall share of regulatory fee allocation, or as a percentage of other categories of space station fee payors. The *NPRM* seeks comment on all these proposals, examinations, and expectations.

5. Treatment of RPO, OOS, and OTV

46. The Commission proposes, on an interim basis, to assess regulatory fees on spacecraft primarily performing Rendezvous and Proximity Operations (RPO) and On-Orbit Servicing (OOS) by including them in the existing regulatory fee category ''Space Stations (per license/call sign in non-geostationary orbit) (Small Satellites)'' regardless of the orbit in which they are designed to operate in. OOS and RPO missions can include satellite refueling, inspecting and repairing in-orbit spacecraft, capturing and removing debris, and transforming materials through manufacturing while in space. Due to the nascent nature of OOS and RPO industry, or more generally ''in-space servicing'' industries, there is not a distinct regulatory fee category for such operations, despite that fact that spacecraft have begun to operate under 47 CFR part 25 for radiocommunications while conducting these types of operations. Although the Commission has previously determined that the record is not sufficiently complete to adopt a separate regulatory fee category for spacecraft performing OOS and RPO, it tentatively concludes in the *NPRM* that it is appropriate to assess regulatory fees on RPO and OOS space stations as the Commission does for small satellites, rather than as Space Stations (Geostationary orbit) or Space Stations (Non-Geostationary Orbit)—Other. The Commission also tentatively concludes that it is appropriate to assess regulatory fees on Orbital Transfer Vehicles (OTV) in the same manner.

47. The Commission first considered adopting additional fee categories for RPO and OOS in the notice initiating

the FY 2022 regulatory fee assessment proceeding. At that time, commenters proposing such additional fee categories cited the similarities between the characteristics of small satellites and RPO and OOS. The commenters distinguished between OOS spacecraft and traditional NGSO satellites in that OOS spacecraft have limited duration and scope of use, as well as a limited number of earth stations; require a smaller investment in OOS technology; require less ongoing regulation owing to the shorter duration of OOS spacecraft; will likely be licensed on a shared use of spectrum basis, and without the need for processing round procedures or post-processing round disputes over matters such as interference protection and spectrum priority. Commenters also submitted that a fee category for RPO services would provide much need permanency and clarity to support this nascent infrastructure.

48. The Commission found, however, that it was premature at that time to adopt new fee categories for OOS and RPO operations. It observed that there have been a limited number of such operations and these were treated on a case-by-case basis, without a specific license processing regime. It also expressed the expectation that most OOS and RPO operations would involve NGSO space stations, but tentatively concluded that it was too early to identify exactly where operations such as those in low-Earth orbit might fit into the regulatory fee structure in the future. Accordingly, it found that the record was insufficient to propose to establish fee categories or a methodology for assessing fees to such categories. The Commission sought comment on those tentative conclusions, as well as whether and how to assess fees for RPO and OOS spacecraft that operate near the GSO arc.

49. Since that time, the Commission has continued to find that the record was insufficient to adopt a new regulatory fee category for in-space servicing operations, such as OOS and RPO. In the order adopting regulatory fees for FY 2022, the Commission determined that the record was insufficient to support adopting new regulatory fee categories for OOS and RPO due to the nascent nature of these systems and the need for more experience with the operations of such systems and the FTE time required to support them. For the same reasons, the Commission declined to adopt separate fee categories for OOS and RPO in the FY 2023 regulatory fee proceeding, again finding that the record remained too incomplete and concluding that there was insufficient understanding of the nature and regulation of such spacecraft to consider concrete proposals for assessing regulatory fee categories for OOS and RPO space stations at that time. The Commission noted that it was still in the early stages of considering the regulatory environment for such services as a whole, and the definitions of which services would fit into OOS and RPO were yet to be adopted. Instead, the Commission stated it would continue to develop a record that would inform possible establishment of a fee category for OOS and RPO and an appropriate methodology for assessing fees for such a category.

50. In the *NPRM,* the Commission proposes that it should no longer delay adopting a regulatory fee category for OOS and RPO space stations, even if it has not yet adopted a separate regulatory environment for such services. In 2022, the Commission initiated a Notice of Inquiry, 87 FR 56365 (Sept. 14, 2022), regarding the regulatory needs related to in-space servicing, assembly, and manufacturing—or ''ISAM''—that could include such services as RPO and OOS. The Commission has since adopted a Notice of Proposed Rulemaking, 89 FR 18875 (Mar. 15, 2024), seeking comment on a framework for licensing ISAM space stations. That proceeding is still in the early stages of considering the regulatory environment for such services. Nonetheless, the Space Bureau has considered applications for space stations performing RPO and OOS and issued licenses for such space stations under the existing regulatory framework of 47 CFR part 25, and such stations are already operational and subject to payment of regulatory fees. The Space Bureau anticipates that it will receive additional applications for such services in the near future, likely before the conclusion of any proceeding that may consider a separate licensing regime for such systems. Accordingly, there is a need to propose a method for assessing regulatory fees on spacecraft primarily performing RPO and OOS now, even while the consideration of the regulatory environment for such services is ongoing.

51. Although the record remains insufficient to propose a new category of regulatory fees for these services, the Commission proposes, on an interim basis, to include RPO and OOS within an existing category of regulatory fees. In this respect, the Commission tentatively concludes that the regulatory fee categories of Space Stations (Geostationary Orbit) and Space Stations (Non-geostationary Orbit)—Other do not reflect the amount of regulatory work required by these nascent RPO and OOS services. Those fee categories are reflective of the greater FTE burden associated with regulation of more numerous and more complex space stations that primarily provide ''always on'' communication services, using spectrum and orbital resources on a protected basis, subject to processing rounds or ''first-come, first-served'' procedures, and requiring the use of a large number of associated earth stations. The Commission also tentatively concludes that the regulatory fee category of ''Space Stations (Non-geostationary Orbit)—Less complex'' is not the most appropriate fit, since space stations providing primarily RPO and OOS do not fall within the existing definition of ''less complex'' NGSO space stations, which is limited to space stations primarily providing EESS and/or AIS and the regulatory framework for RPO and OOS space stations is not sufficiently clear at this time. The Commission does not propose to use the existing NGSO ''less complex'' fee category for RPO or OOS space stations, since it tentatively concludes that the regulatory burden of RPO and OOS space stations is currently far less than that of ''less complex'' NGSO space stations. The Space Bureau has received relatively few applications for RPO or OOS space stations, and although it anticipates receiving more in the near future, the amount of FTE resources required at the present time to regulate these services is not comparable to the resources required for regulation of NGSO ''less complex'' space stations. It is possible that, in the future, the regulatory burden of RPO and OOS may significantly increase and justify revisiting this tentative conclusion, but at the present moment the regulatory burden of RPO and OOS space stations is more similar to that presented by small satellite space station licensees, which are also few in number and involve a relatively small number of space stations that have limited duration and scope of use and operate using shared spectrum resources.

52. Although the Commission previously declined to adopt an interim fee for RPO and OOS space stations, including one equivalent to the fee assessed for small satellites, it did so due, in part, to time constraints that would not allow for the adoption of a new fee and the desire for more experience before adopting a separate fee for RPO and OOS space stations. In the *NPRM,* the Commission is not proposing to adopt a new fee for RPO and OOS space stations, but rather, on an interim basis, to assess fees using the

existing Space Stations (Small Satellites) fee category. Given the immediate need to assess regulatory fees on RPO and OOS space stations now and in the near future, the Commission tentatively concludes that the purposes of 47 U.S.C. 159 would be best met by erring on the side of caution and assessing regulatory fees under the category of fees associated with the least-burdensome set of space station regulatees, rather than waiting for additional experience and in the interim potentially subjecting existing RPO and OOS space stations subject to regulatory fees for Space Stations (Geostationary Orbit) or Space Stations (Non-Geostationary Orbit)—Other, that may not reflect the amount of regulatory work required by these nascent services. As the Commission gains more experience with the regulation of RPO and OOS space stations, it will be in a better position to adopt a separate fee category for RPO and OOS space stations, if appropriate. The *NPRM* seeks comment on this proposal and tentative conclusions.

53. The Commission also proposes to assess RPO and OOS space stations using the small satellite fee category on an interim basis, regardless of the orbit utilized. Small satellites are limited to NGSO operations under 47 CFR part 25, and the Commission stresses that it is not proposing or suggesting that RPO or OOS space stations would meet the definition of a ''small satellite'' or ''small spacecraft'' under 47 CFR part 25. Instead, solely for the purpose of assessing regulatory fees, the Commission proposes to include RPO or OOS space stations within the existing Space Stations (Small Satellite) regulatory fee category, rather than creating a new regulatory fee category for RPO and OOS space stations. The Commission tentatively concludes that the rational above for using the small satellite regulatory fee category to assess fees on RPO and OOS space stations applies regardless of whether the RPO or OOS space stations operate in GSO or NGSO. The Commission also proposes to assess the regulatory fee for RPO or OOS space stations on a ''per license/call sign'' basis as is the case for small satellites payors, rather than on the ''per system'' basis used for Space Stations (Non-geostationary Orbit). In addition, the Commission proposes to assess regulatory fees on OTV space stations in the same manner; that is, to assess regulatory fees for OTV space stations using the existing regulatory fee category of small satellite space stations on a per license/call sign basis. Like RPO and OOS space stations, OTVs are also few in number and involve a relatively small number of space stations that have limited duration and scope of use and operate using shared spectrum resources in a manner that reduces the amount of FTE resources needed for their licensing and regulation. The Commission has already licensed OTV space stations under its existing 47 CFR part 25 regulatory framework, and it anticipates that additional applications for OTV will be filed in the near future. Accordingly, the same rationale applies to erring on the side of caution and assessing regulatory fees under the category of fees associated with the least-burdensome set of space station regulatees, at least until the Commission gains more experience in this matter. The *NPRM* seeks comment on these proposals and tentative conclusions. It also seeks comment on whether this proposed approach for assessing regulatory fees for RPO, OOS, and OTV could also be applied to all space stations that fall within the definition of ISAM.

54. The Commission finds that the proposal to assess regulatory fees for RPO, OOS, and OTV space stations using the existing fee category for small satellites would be an amendment as defined in 47 U.S.C. 159(d). Such an amendment must be submitted to Congress at least 90 days before it becomes effective pursuant to 47 U.S.C. 159A(b)(2).

55. Finally, the Commission proposes that RPO or OOS space stations that are attached to another space station as part of servicing or mission extension operations be assessed regulatory fees separate from, and in addition to, any regulatory fees assessed on the space station that is being serviced or that is having its mission extended. The Commission acknowledges that this tentative conclusion is the opposite of the Commission's prior tentative conclusion that RPO and OOS space stations joined to GSO space stations during servicing or mission extension operations should not be assessed separate regulatory fees, despite the RPO or OOS space stations being assigned their own call signs, which is the unit usually used to assess regulatory fees for space stations. This tentative conclusion was never adopted, and as such was only tentative in nature. Upon further consideration, the Commission tentatively concludes that the requirements and purpose of 47 U.S.C. 159 would be better met by assessing regulatory fees on such attached RPO or OOS space stations.

56. The premise underlying the prior tentative conclusion was that the RPO or OOS space station is operating as part of an existing GSO space station, rather than as a separate independent space station, and therefore there is no independent operating space station for a separate fee assessment and that the regulatory fee burden for the RPO or OOS space station would be included in the fees collected from the GSO space station fee payors. Upon further consideration, the Commission tentatively concludes that this premise is not correct. As long as a RPO or OOS space station retains a separate authorization, with its own call sign, it is a separate space station for the Commission's regulatory purposes, so that there is a space station for a separate fee assessment independent of the space station being serviced or having its mission extended. Regulatory work is associated with the licensing and regulation of the RPO or OOS space station that is separate and independent from the regulatory work associated with the space station that is being serviced or having its mission extended. FTE work expended on reviewing license applications, issuing licenses, and exercising regulatory supervision of the RPO or OOS space stations is completely separate from the FTE work associated with the licensing and regulation of the space station being serviced or having its mission extended. In addition, the Commission observes that it would be difficult to administer regulatory fees for RPO or OOS space stations under the Commission's prior tentative conclusion, since the status of the RPO or OOS space station for regulatory fee purposes would depend on whether the RPO or OOS space station is attached to another space station on the date when regulatory fees are assessed, or whether it may be operating unattached, for example, between servicing missions, which could lead to uncertainty as to whether regulatory fees are due or not, as well as potential gaming of regulatory fees through the timing of missions. Pursuant to 47 U.S.C. 159, the Commission is required to assess regulatory fees to recover all of its FTE work based on how FTE time is used. The Commission tentatively concludes that it would not be able to meet that requirement if it was to consider the RPO or OOS to be part of the serviced space station, and not subject to separate regulatory fees. The Commission seeks comment on its proposal and the reasoning in support of it.

6. Assessment of Fees on Authorized, But Not Operational, Space Stations

57. The Commission proposes to assess regulatory fees on all authorized

space and earth stations, not only on stations that are ''operational.'' Currently, regulatory fees for space stations are payable only when the space stations are certified by their operator to be operational. An earth station payor is required to pay a fee once it has certified that the earth station's construction is complete, but in the rare instances in which a license limits an earth station's operational authority to a particular satellite system, the fee is not due until the first satellite of the related system becomes ''operational'' within the meaning of the Commission's rules. A space station is authorized, in contrast, after an application or petition has been reviewed and granted by the Commission and the grant is effective. Because significant FTE resources are involved with the licensing of space and earth stations, the Commission tentatively concludes that the objectives of 47 U.S.C. 159 would be better met by assessing regulatory fees once a space or earth station is licensed, rather than when a space station becomes operational.

58. The origin for assessing regulatory fees on space stations when they become operational, rather than when licensed, was the statutory text of 47 U.S.C. 159 from 1993. The Omnibus Budget Reconciliation Act of 1993 that created 47 U.S.C. 159 and proposed regulatory fees in 47 U.S.C. 159(g), which identified two fee categories and amounts for space stations: (1) ''Space Station (per operational station in geosynchronous orbit) (47 CFR part 25)'' and (2) ''Space Station (per system in low-earth orbit) (47 CFR part 25)''. The Commission adopted the requirement that GSO space stations be operational before regulatory fees are assessed as part of 1994 regulatory fee proceeding, basing that decision on the statutory language. In that same proceeding, the Commission also applied to NGSO space stations the requirement that space stations be operational before regulatory fees are payable, even though the text of 47 U.S.C. 159(g) did not include the word ''operational'' for systems in low-earth orbit, as it did for GSO space stations. The Commission has kept the ''operational'' requirement for assessing regulatory fees on space stations through subsequent annual regulatory fee assessment proceedings without comment or reevaluation.

59. The Commission tentatively concludes that there is no statutory bar to assessing regulatory fees on authorized, but not yet operational, space and earth stations. Pursuant to 47 U.S.C. 159, the Commission is explicitly given authority to adjust its regulatory fees by rule if it determines that the schedule of fees requires amendment, and such adjustment by rule is what is being proposed in the *NPRM*. In addition, Congress deleted 47 U.S.C. 159(g), which was the textual basis for the operational requirement for assessing regulatory fees on space stations, in the 2018 RAY BAUM's Act. Accordingly, the original textual language of 47 U.S.C. 159(g) appears no longer relevant to the Commission's amendments of regulatory fee schedules. The *NPRM* seeks comment on this tentative conclusion and the reasons underlying it.

60. In the *NPRM,* the Commission tentatively concludes that now is an appropriate time to reevaluate the current policy that a space station must be operational before regulatory fees can be assessed. The recent creation of Space Bureau provides an opportune time to revisit past conclusions about the regulatory burdens associated with space and earth station fee payors and how those fees should be assessed. The increased burdens of regulating space stations as a result of the changes in the satellite industry and the creation of the Space Bureau will increase the share of regulatory fees to be assessed on space and earth station regulatees, compared to the number of FTEs regulating space stations in the International Bureau, so the Commission should look to have as broad a base as possible for its regulatory fees in a manner that accounts for all regulatees that benefit from Space Bureau oversight as a matter of making its regulatory fees more fair.

61. The Commission observes that a licensee or grantee already benefits from the substantial FTE resources used to review and grant the application or petition, as well as from the FTE resources used to protect the benefits conferred by the grant of a license or of U.S. market access, such as use of spectrum and orbital resources and protection from interference, which convey upon issuance of the license or grant. Moreover, given the bespoke nature of many satellite systems, Space Bureau staff expertise is utilized by the industry before, during and after an application (including modifications thereof) or petitions for rulemaking are filed. In addition, as observed elsewhere in the *NPRM,* NGSO space stations are taking an increased share of FTE burdens relative to GSO space stations and are being assessed higher regulatory fees, so there is also increased importance to make sure that all NGSO beneficiaries of those FTE burdens are assessed fees. For example, if five NGSO FSS systems are licensed through a single processing round, FTE licensing work is necessitated by all five systems, but under the current policy only the operational systems would be required to pay regulatory fees, and the entire regulatory burden for that category of space stations would be paid only by operational systems. Systems that become operational later, or not at all, would not be assessed regulatory fees associated with that FTE work for potentially many years, or perhaps never. As a result, systems that become operational earlier than other licensed systems would bear the entire fee burden of regulatory work done on behalf of all regulated systems. The NPRM seeks comment on these observations.

62. The Commission proposes that the intent of Congress in 47 U.S.C. 159 would be better fulfilled by recovering the costs of licensing and regulatory oversight based on authorized space stations, rather than operational space stations. Congress has directed the FCC to recover its annual S&E appropriation through regulatory fees, and the S&E appropriation includes funding for FTE time spent reviewing and granting applications, which is accrued regardless of when a space station becomes operational. In most cases, the amount of FTE spent on reviewing applications corresponds to the number of space stations requested to be authorized, rather than the number that become operational, since Commission staff must spend resources assessing the space station system as proposed in the application, regardless of whether all the space stations actually become operational. In addition, once a space station is authorized, it is subject to regulatory oversight by the Space Bureau and is entitled to all the benefits and privileges that come with an FCC license or market access grant. The *NPRM* seeks comment on this proposal.

63. The Commission also proposes that assessing regulatory fees based on authorized space stations, rather than operational space stations, should not present challenges to administer. No additional information collection would be needed to determine whether a space station is authorized (as opposed to operational), since the FCC's license or grant of market access displays the authorization particulars, including the date of grant and the number of space stations authorized, and the grants and the information contained within the grants are readily available to the Commission and the public. The Commission proposes to continue its practice of publishing a list of the space stations and systems that would be subject to regulatory fees as U.S. licensed space stations or non-U.S.

licensed space station that have been granted U.S. market access. As is the case now, the Commission proposes that any party identifying errors will be able to advise Commission staff of the error and seek correction. The Commission also proposes that NGSO licensees may seek to modify their licenses under existing 47 CFR part 25 requirements to have the number of authorized space stations modified to reflect the number of actual operational space stations if not as many space stations become operational as were applied for, or the number of authorized space stations diminishes due to the retirement of space stations at the end of their missions. The Commission acknowledges that permitting payors to reduce the number of authorized space stations after an application is granted could be inconsistent with the proposal that regulatory fees should be based on the number of space station licensed, rather than the number of operational space stations, but the Commission tentatively concludes that it is easier to administer its fees if they are based on the number of space stations authorized in the current license, rather than having to look back at previous iterations of license grants in order to fix the fee at the highest number of space stations licensed. Furthermore, the Commission does not anticipate that licensees or grantees will seek to reduce the number of authorized satellites significantly after authorization to avoid regulatory fees; rather, it anticipates that such reductions will be marginal and be due to business or operational considerations, rather than due to regulatory fee considerations. The Commission seeks comment on these proposals. It also seeks comment on whether, if the proposal to assess regulatory fees based on authorized, rather than operational, space stations is adopted, the Commission should assess fees on this basis in the current fiscal year, or whether it would be more appropriate to assess fees on this basis beginning in FY 2025.

64. The Commission recognizes that assessing regulatory fees before a GSO space station, or a system of NGSO space stations, is operational could lead to collateral effects that are outside the FTE-focused methodology required under 47 U.S.C. 159. For example, assessing regulatory fees on authorized, but non-operational, space stations could provide an incentive for applicants to request the Space Bureau to defer action on applications until after the period has passed for assessing which payors owe regulatory fees for the fiscal year, so as to defer the assessment of regulatory fees until the subsequent fiscal year. Alternatively, it could provide an incentive for space station operators to seek licensing outside the United States, and to apply for U.S. market access only once the system has become operational, thereby deferring the assessment of regulatory fees in a manner not available to U.S.-licensed space station operators. It could also increase the costs to the operator at the initial funding phases of a space station or system of space stations. The Commission seeks comment on these, or any other, potential collateral effects, and whether they weigh against assessing regulatory fees on authorized, but not yet operational, space stations. In addition, if the Commission does not adopt the proposal to begin to assess regulatory fees when a space station, or system of space stations, is authorized, could the benefits for the proposal still be realized in part by assessing regulatory fees on the number of authorized space stations in the system, once the system has been notified as operational, as defined under 47 CFR 25.121(d)(2)?

65. The Commission finds that the proposal to assess regulatory fees on authorized, rather than operational, space and earth stations would be an amendment as defined in 47 U.S.C. 159. Such an amendment must be submitted to Congress at least 90 days before it becomes effective pursuant to 47 U.S.C. 159A(b)(2).

66. Summarizing the proposed changes to the existing regulatory fee methodology for space stations, the Commission proposes to modify the fee categories for space stations contained in 47 CFR 1.1156 to read as follows:

Fee category	Fee amount
Space Stations (per authorized station in geostationary orbit) (47 CFR part 25)	[TBD]
Space Stations (per authorized system in non-geostationary orbit) (47 CFR part 25) (Other—Large Constellations)	[TBD]
Space Stations (per authorized system in non-geostationary orbit) (47 CFR part 25) (Other—Small Constellations)	[TBD]
Space Stations (per authorized system in non-geostationary orbit) (47 CFR part 25) (Less Complex)	[TBD]
Space Stations (per license/call sign) (Small Satellite)	[TBD]

C. Earth Station Fee Proposals

67. The Commission proposes to increase the amount of regulatory fees assessed on earth stations in order to reflect more accurately the amount of FTE resources dedicated to their regulatory oversight. Currently, there is a single regulatory fee category for earth stations—Transmit/Receive & Transmit only (per authorization or registration). For FY 2023, the fee amount for this category per authorization or registration was $575. For the reasons set forth in the *NPRM,* the methodology used to assess regulatory fees for earth station payors may underestimate the FTE burdens associated with regulatory oversight of this category of fee payors, and the Commission seeks comment on proposals to adjust its regulatory fees to more accurately recover the amount of FTE resources devoted to licensing and regulation of earth stations.

68. The unit for assessing regulatory fees for earth stations—per authorization or registration—is not uniform. In some cases, an authorization can be for a single earth station, such as a feeder link station in the mobile-satellite service. In other cases, a single authorization could be for several thousand earth stations under what is often called a ''blanket license.'' When first established in 1994, the fee category for earth stations had four sub-categories with different fee amounts. These sub-categories were: (1) VSAT & Equivalent C-band antennas (per 100 antennas)—$6; (2) Mobile Satellite Earth Stations (per 100 antennas)—$6; (3) Less than 9 meters (per 100 antennas)—$6; and (4) 9 Meters or More—Transmit/Receive and Transmit Only (per meter)—$85; Receive Only (per meter)—$55. In 1995, the Commission deleted receive-only earth stations as a service subject to regulatory fee requirements and determined that assessing fees on a per authorization or registration basis was more equitable method than on a per meter or per 100 earth station basis. The Commission set the earth station regulatory fee per authorization or registration at $330 for all three remaining sub-categories (*i.e.,* VSAT, Mobile-Satellite Earth Stations, Fixed Earth Stations—Transmit/Receive & Transmit Only). 47 CFR 25.1156, however, lists only a single category and fee for earth station payors: Earth Stations: Transmit/Receive & Transmit only (per authorization or registration).

69. The Commission has not assessed earth station regulatory fees as a percentage of overall bureau regulatory burdens. Rather, the assessment of regulatory fees for earth stations has been based on the initial per unit fee for earth stations—Transmit/Receive & Transmit only (per authorization or registration) that was established by the Commission in 1995. This initial fee has been adjusted on a year-to-year basis, but usually only in terms of a percentage change in the fee to reflect the changes in the amount of appropriated S&E each year and the number of anticipated units of payors. Since 1995, the Commission has periodically discussed earth station regulatory fees or considered adjusting earth station regulatory fees for factors beyond a change in the annual S&E appropriation or the number of units of earth station fee payors. In 2014, the Commission increased the earth station regulatory fee per unit by 7.5%, from $275 in FY 2013 to $295 for FY 2014, in order to reflect more appropriately the number of FTEs devoted to the regulation and oversight of the earth stations in response to concerns raised by commenters that space stations paid an unreasonably high portion of the regulatory fees for the regulation of the satellite industry. The following year, in 2015, the Commission sought comment on whether to raise the earth station regulatory fees again but declined to do so finding that the issue required further analysis. In particular, due to comments suggesting that the Commission adopt different regulatory fees for different types of earth stations and an ongoing proceeding that held the possibility of affecting the distribution of FTE work, the Commission deferred the issue for the next year's proceeding. The Commission ceased consideration of different regulatory fees for different types of earth stations in 2016, however, when the commenter chiefly advocating for such consideration ceased to back its earlier proposal and no other entity commented on the record in favor of the proposal to assess different levels of regulatory fees on different types of earth station licensees. In 2020, commenters in the annual regulatory fee assessment proceeding proposed that the Commission review the apportionment of regulatory fees between earth and space station payors and implement different earth station subcategories for regulatory fee purposes. The Commission declined to do so, finding that there was insufficient evidence in the record at that time to increase apportionment of fees paid by earth station licensees or on which to base the creation of subcategories of earth station fees.

70. The Commission's focused examination of space and earth station fees as a result of the creation of the Space Bureau provides an opportunity to reconsider whether its regulatory fees adequately reflect the amount of FTE resources devoted to licensing and regulation of earth stations. The Commission tentatively conclude that they do not, and that a change in methodology in assessing regulatory fees for earth stations is required. Specifically, for the reason set forth in the *NPRM,* the Commission proposes to adopt an apportionment of the total regulatory fees allocated to the Space Bureau between space and earth station payors on a percentage basis, similar to the manner that space station fees are apportioned between GSO and NGSO space stations, and proposes that the apportionment be 20 percent for earth stations and 80 percent for space stations. The *NPRM* seeks comment on this proposal and apportionment.

71. For FY 2023, earth station licensees were assessed a total of $1,667,500 in regulatory fees, which amounted to 7.69% of the $21,656,110 in regulatory fees assessed for all space and earth station payors. Several factors lead to the Commission's tentative conclusion that this percentage underestimates the amount of FTE resources dedicated to earth station licensing and regulation. First, unlike the case for apportionment of space station fees between GSO and NGSO space stations, or among various subcategories of NGSO space stations, it may be feasible to attribute Space Bureau FTE resources that are dedicated exclusively, or nearly exclusively, to earth station licensing and regulation. Within the Space Bureau is the Earth Station Licensing Division (ESLD), which lists eleven staff members that work almost exclusively on earth station licensing and regulation and that are not routinely involved in matters of space station licensing or regulation. If each staff member were to account for an FTE, these eleven staff members would account for approximately 20% of the 54 FTEs that could be categorized as direct FTEs for the Space Bureau for FY 2024, minus a small number of FTEs that may be categorized as indirect FTEs as discussed elsewhere in the *NPRM*. The Commission tentatively concludes that apportioning regulatory fee percentages between earth and space station payors based on the percentage of direct FTEs involved the licensing and regulation of each category, where feasible to do so, is a reasonable way to fulfill Congress' mandate in 47 U.S.C. 159 that the Commission's regulatory fees must reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities. The Commission seeks comment on whether using FTEs in the ESLD to determine the proportion of earth station fees relative to space station fees is reasonable and reflective of Congressional intent. Are there other factors that are reasonably related to the FTE resources provided to earth station licensees that are not reflected in the Commission's proposal? Are there alternatives to using the percentage of direct FTEs involved in earth station licensing and regulation that should be considered?

72. The Commission recognizes that the proposal to apportion 20% of all Space Bureau regulatory fees to earth station licensees beginning in FY 2024 will result in a substantial increase in the per unit regulatory fee paid by earth station licensees, both because the percentage share of Space Bureau regulatory fees is likely to increase as a whole due to the increased number of direct FTEs in the Space Bureau compared to the International Bureau, and because the percentage share of earth station fees of Space Bureau fees would increase from around from around 8% to 20% under the Commission's proposal. Nonetheless, the Commission tentatively concludes that the increase in earth station regulatory fees is consistent with the mandate given by Congress in 47 U.S.C. 159 for the Commission to recover its costs of regulation through fees that reflect the full-time equivalent number of employees within the Commission that provide the regulatory benefits to the payors. The *NPRM* seeks comment on this tentative conclusion and observation.

73. In light of the tentative conclusion that earth station licensees should be apportioned 20% of all fees allocated to Space Bureau fee payors, the Commission seeks to revisit the question of whether to create subcategories of earth station regulatory fee payors to better differentiate the amount of regulatory burdens associated with different types of earth station licenses. For example, should Very Small Aperture Terminal (VSAT), Mobile-Satellite Earth Stations, and Fixed Earth Stations—Transmit/Receive & Transmit Only be reinstated as distinct fee categories, each with a separate fee assessment? The Commission also seeks to develop a

record as to whether there are types of earth station licenses that require more FTE resources to license and regulate, and that account for a higher share of FTE burdens than other categories of earth station licensees, for which a higher regulatory fee should be assessed. Likewise, are there categories of earth station licensees that require less FTE resources to license and regulate and therefore should be assessed a lower regulatory fee? For example, in the past commenters have suggested that blanket-licensed earth station licensees involving multiple antennas under a single authorization should pay higher fees than other earth station licensees because blanket-licensed earth stations require more regulatory oversight. The *NPRM* asks commenters to provide evidentiary support for their propositions and to provide specific proposals for what these categories should be and how to allocate fees among any categories. Furthermore, comments should address the administrability of any proposed categories and whether the Space Bureau would be able to assign costs of specific regulatory activities to any proposed categories of earth station regulatory fees.

74. The Commission finds that the creation of any new fee categories for earth stations would be an amendment as defined in 47 U.S.C. 159. Such an amendment must be submitted to Congress at least 90 days before it becomes effective pursuant to 47 U.S.C. 159A(b)(2).

75. If the proposals made in the *NPRM* are not adopted, the Commission seeks comment on whether it should, at a minimum, increase the amount of the per unit fee for the existing fee category of ''Earth Station—Transmit/Receive & Transmit only (per authorization or registration)'' in order to reflect the increase of the Space Bureau's share of overall Commission regulatory fees as compared to the International Bureau's share in FY 2023. If so, how should this increase be calculated and what should be the percentage increase over the FY 2023 fee?

D. Alternative Methodology for Assessing Space Station Regulatory Fees

76. The proposals made elsewhere in the *NPRM* are amendments or adjustments to the existing methodology of assessing regulatory fees for space stations. This existing methodology was founded on the original regulatory fees proposed by Congress in 1994, which provided for earth station regulatory fees and separate categories of space station fees depending on the orbit used by the space station(s): geostationary or non-geostationary. Since then, the Commission has created subcategories for NGSO space stations and has continuously tried to adjust the allocation of FTE burdens among GSO space stations and the various subcategories of NGSO space stations. The Commission now seeks comment on an alternative methodology for assessing space station regulatory fees that eliminates the distinction between GSO, NGSO, and all the subcategories of NGSO, while preserving a separate fee category for small satellites. For the reasons discussed in the *NPRM,* the Commission seeks comment on whether this alternative methodology would be more administrable, fair, and sustainable than the existing methodology, even if all the proposals made elsewhere in the *NPRM* are adopted.

77. The initial stages of the alternative methodology are the same as under the existing methodology. The Commission would first determine the Space Bureau's share of the total FCC annual S&E appropriation for the given fiscal year using the existing methodology used by the Commission. After the Space Bureau's share is determined, the Commission proposes that the share be allocated between earth station and space station fee payors proportional to the Space Bureau FTE resources that are involved in the licensing and regulation of each segment. As stated elsewhere in the *NPRM,* the Commission tentatively concludes that it is feasible to attribute Space Bureau FTE resources that are dedicated exclusively, or nearly exclusively, to earth station licensing and regulation. The Commission anticipates that the FTE resources attributed to earth stations will be 20 percent of the total Space Bureau share, resulting in 80 percent of regulatory fees to be attributed to space station regulatory fees. Earth station fees would be determined by dividing the total share attributable to earth station licensing and regulation by the number of units for the fiscal year, which were 2900 in FY 2023.

78. The Commission's alternative methodology also would preserve a separate fee category for Space Stations (per license/call sign) (Small Satellite), with the inclusion of RPO, OOS, OTV, and potentially other ISAM space stations in this category on an interim basis, as was proposed elsewhere in the *NPRM*. It would also retain the proposal to set this regulatory fee at the level set for FY 2023, with only an adjustment each year to reflect the percentage change in the FCC appropriation from the previous fiscal year. This fixed regulatory fee for Space Stations (Small Satellite) would be multiplied by the number of small satellite licenses/call signs required to pay regulatory fees for the fiscal year, and this total amount would be subtracted from the amount of space station regulatory fees to be assessed on all remaining space station payors. Fees would be assessed on authorized space stations, not just operational space stations, as proposed in the *NPRM*. This treatment of small satellite regulatory fees would be consistent with the Commission's existing methodology for assessing space station regulatory fees, taking into account the proposals made in the *NPRM*.

79. The main change from the existing methodology is a proposal to establish a common initial unit of regulatory fee payment for all space stations, regardless of which orbit they are designed to operate in, and to eliminate separate fee categories for Space Stations (Geostationary Orbit), Space Stations (Non-Geostationary Orbit)—Less complex, and Space Stations (Non-Geostationary Orbit)—Other. The alternative methodology would have a single space station fee category for ''Space Stations (Per Call Sign in Geostationary Orbit or Per System in Non-Geostationary Orbit).'' The category would be tiered, with a single GSO space station or a NGSO system with up to 100 authorized space stations constituting this initial tier and being counted as one unit for assessment of space station regulatory fees. Additional tiers would be created to account for NGSO systems with more than 100 authorized space stations, for example 500 or 1,000 space stations per NGSO system per additional tier. Each tier would be counted as an additional unit for assessment of space station regulatory fees. The total number of units (initial and additional units) would be added together and the total space station allocation of the Space Bureau share would be evenly divided among the total number of units, resulting in a per unit regulatory fee for the fiscal year.

80. If the unit tiers are defined per 500 additional authorized space stations, the initial unit range will be 1–100 authorized space stations, the first additional unit will be assessed to systems with 101–500 authorized space stations, and an additional unit will then be assessed for each additional block of 500 authorized space stations. Similarly, if the additional unit tiers are defined per 1,000 additional authorized space stations, the initial unit range will be 1–100 authorized space stations, the first additional unit will be assessed to systems with 101–1,000 authorized

space stations, and an additional unit will then be assessed for additional block of 1,000 authorized space stations. For example, a single GSO space station or a NGSO system of 100 authorized space stations or fewer would be assessed one unit's share of space station regulatory fees. If that NGSO system were to have 500 authorized space stations, it would be assessed an additional unit's share of regulatory fees, regardless of whether the additional tiers are based on 500 or 1,000 additional space stations per NGSO system. If that NGSO system were to have 1,000 authorized space stations, it would either be assessed one additional unit's share (if the additional tiers are based per 1,000 authorized space stations) or two additional units' share (if the additional tiers are based per 500 authorized space stations). Accordingly, GSO payors and NGSO systems of 100 authorized space stations or fewer would be assessed the lowest regulatory fees, while payors with multiple authorized GSO space stations or with NGSO systems with more than 100 authorized space stations would be assessed higher regulatory fees, with the highest regulatory fees assessed to payors with a large number of GSO space stations and to payors with NGSO systems consisting of thousands of authorized space stations.

81. The Commission seeks comment on whether this alternative methodology would be more administrable, fair, and sustainable than the existing methodology. First, it could be more administrable because it does not require the Space Bureau to make the challenging determination of how FTE resources are allocated among space station payors. The Commission has previously recognized the considerable challenge of apportioning regulatory fees among space stations fee categories. Under the alternative methodology, tiered units are used as a proxy for the amount of FTE resources that are attributable to the system without having to repeatedly make challenging determinations of the amount of FTE resources attributable to particular categories or subcategories of space station regulatory fee payors. Furthermore, unless the number of authorized space stations substantially decreases over a year, the amount of regulatory fee assessed to a system on a per unit basis is unlikely to increase and is likely to remain stable (or possibly decrease) year to year. The alternative methodology does not utilize any characteristics of a space station system other than the number of authorized space stations in the system and is not dependent on potentially difficult evaluations of the complexity of a system under the Commission's licensing and regulatory framework. It would not require the Commission to collect more information from operators. Thus, the Commission anticipates that the alternative methodology can remain stable longer than the existing methodology for assessing space station regulatory fees. The *NPRM* seeks comment on these issues.

82. The Commission seeks comment on whether the alternative methodology is more fair than the existing methodology, because it better corresponds FTE resources spent on licensing and regulating space stations with the types of space station systems that benefit from the FTE resources, thereby decreasing the per unit regulatory fees for space station payors that benefit less from FTE resources. Under the alternative methodology, higher aggregate fees will be assessed to systems with large numbers of authorized space stations, GSO or NGSO, but the Commission expects those higher fees will be borne by payors that benefit from more FTE resources in support of licensing and regulating their systems. The alternative methodology also increases the number of units over which space station regulatory fees are spread, thereby decreasing the per unit regulatory fees for all space station payors as additional units are added, regardless of their orbital configuration. The tiered system also avoids the situation where systems with a very large number of authorized space stations could effectively end up paying all, or nearly all, space station regulatory fees, and where the fee per unit for a single GSO space station or a NGSO system of up to 100 authorized space stations would be diluted to an amount that may not adequately reflect the amount of FTE resources allocated to such fee payors.

83. In addition, under the existing methodology, regulatory fees for a particular category of fee payors go down per payor as more space stations or systems become operational in that category. Although such a decrease is beneficial for payors in that category, it may not reflect the increased amount of FTE resources required for that category of fee payors because of the additional resources needed for authorizing and regulating an increasing number of space stations or systems. This can lead to a discrepancy in that a category with rapidly increasing number of space stations or systems becoming operational is assessed lower regulatory fees than a category where the number of payors remains steady or even declines. This discrepancy continues until the Commission makes the challenging determination to alter the allocation of regulatory fees among the fee categories, which could take years to implement. For example, if additional NGSO systems become operational under the existing methodology, the regulatory fee per system for that particular subcategory of NGSO system would decrease because of the broader base over which the fees for that category would be spread, but it would not decrease the fees assessed on GSO space station payors or on NGSO space station payors in other NGSO subcategories—unless the Commission reallocates the percentage of space station regulatory fees among the GSO and NGSO categories. Under the alternative methodology this discrepancy is eliminated, because the addition of units of authorized space stations will automatically decrease the per unit regulatory fee for all space station regulatory fee payors, because the denominator used to divide the overall space station regulatory fee amount becomes larger. For example, the per unit regulatory fee for GSO space stations will decrease if the number of units assessed to NGSO space station systems increases, even if the number of units assessed to GSO space stations remains the same. Under this example, the per unit regulatory fee for all NGSO space stations would decrease as well. Furthermore, the alternative system avoids assessing the same regulatory fee on systems with a small number of authorized space stations as the fee assessed on systems with a large number of authorized space stations, as is the case under the existing NGSO space stations ''other'' subcategory. The *NPRM* seeks comment on these issues.

84. Finally, the Commission seeks comment on whether the alternative methodology is more sustainable than the existing methodology. The Commission has reason to expect that the number of authorized space stations will increase in the future, rather than decrease, which will result in an even broader base on which to assess space station regulatory fees and which will lower per unit fees for all space station payors, regardless of the orbit in which the space station operates or the services it provides. Because fees are spread across all space station payors, it avoids the situation where the loss of a single payor in an existing fee category could result in significant increases to the regulatory fees paid by the remaining payors in that category, absent Commission action to reexamine fee

allocations. The *NPRM* seeks comment on these issues.

85. The Commission observes that this alternative methodology relies exclusively on the number of authorized space stations to assess space station regulatory fees, rather than the more nuanced approach of the existing methodology of assessing the complexity of a system (and thus the amount of FTE resources required to regulate the system) based on a number of factors. The Commission also acknowledges that it has previously found that the number of space stations in a system is not the key driver of the amount of FTE time devoted to regulatory oversight of such systems. For example, an NGSO system consisting of a single space station that is designed to operate in a novel manner, subject to a processing round, and in a way that requires extensive coordination of spectrum and orbital resources may require significantly more regulatory oversight than a NGSO system of hundreds of space stations having non-exclusive use of spectrum and operating under well-established parameters. But is it reasonable to assume that NGSO systems with hundreds or thousands of authorized space stations require more FTE resources, on average and ignoring outliers, than NGSO systems with 100 authorized space stations or fewer, since as the number of space stations in a system increases, the complexity of spectrum sharing, frequency usage, and orbital debris mitigation plans also increases, generally speaking? While the number of space stations in a system may not be the key driver of the amount of FTE devoted to regulatory oversight of such systems, the Commission expects that it may be a driver, and one that is easier to administer than the more nuanced approach of the existing methodology or the use of other possible proxies for complexity, such as spectrum usage, services provided, or on-orbit mass. In order to gain the potential advantages of the alternative methodology, the number of space stations authorized may be the more administrable metric to serve as a proxy for the amount of FTE resources devoted to a system in order to accomplish the objectives 47 U.S.C. 159, rather than to continue the challenging task of determining which categories or aspects of NGSO systems are more or less complex to regulate on a recurring basis, particularly as new technologies, services, and orbital operations rapidly develop. The *NPRM* seeks comment on these issues.

86. Although the regulatory fees that would be assessed under the alternative methodology for most space station fee payors may be roughly the same or potentially lower than those that would be assessed using the existing methodology, even with the changes proposed in the *NPRM,* the fees assessed for some space station payors could be substantially higher under the alternative methodology. For example, NGSO systems with more than 500 authorized space stations that are categorized as ''less complex'' under the existing methodology could pay more under the alternative methodology. For NGSO systems that are categorized as ''less complex'' under the Commission's existing methodology, it may be possible to reflect that categorization by allowing a greater number of space stations to be included in the first or second tier for those systems. For example, an NGSO system used primarily for EESS and/or AIS communicating with 20 or fewer U.S.-licensed earth stations with up to 500 authorized space stations could be assessed only the initial unit of fees, even though it exceeds the proposed limit of up to 100 authorized space stations for the initial unit. The *NPRM* seeks comment on these issues.

87. Furthermore, if NGSO systems have a significantly larger number of authorized space stations than is the case today, it is possible that tiers of units based on 500 or 1,000 space stations could result in such NGSO systems being assessed a very large percentage share of all space station regulatory fees. In this case, the concern is similar to using a ''per space station'' basis as a proxy for the complexity of a space station system that was discussed elsewhere in the *NPRM.* As discussed, the *NPRM* seeks comment on whether a ''cap'' or ''ceiling'' on the number of authorized space stations on which regulatory fees are assessed could alleviate this concern.

88. The use of tiers also presents the situation where a system with only a handful of authorized space stations over the cut off number of space stations in a tier would be assessed fees under the next higher tier. For example, under a tiered system where an additional unit of fees is assessed per 500 additional authorized space stations, an NGSO system with 501 authorized space stations would be assessed fees for three units (the initial tier of up to 100 authorized space stations, the second tier of up to 500 authorized space stations, and the third tier of 501–1,000 authorized space stations), even though it crossed the second tier threshold by a single authorized space station. While the payor in such a case could seek authorization for one less space station, or modify an existing space station license to remove an authorized space station from its license, this may not make sense from a systems engineering perspective, particularly if the ''spill over'' is 50 or 100 additional authorized space stations. A potential remedy for this situation is to allow partial units for assessing regulatory fees. For example, if the additional authorized space stations per unit is set at 500, and an NGSO system has 508 authorized space stations, it could be assessed 1.016 additional units (508/500) instead of rounding up and being assessed two additional units. If the same NGSO system had 580 authorized space stations, it could be assessed 1.16 additional units (580/500) instead of two additional units. This fractional approach could result in more granular assessments of regulatory fees than a tiered system using cut offs. The *NPRM* seeks comment on these issues, particularly on the feasibility of implementing such an approach and whether it requires too much precision in assessing the number of authorized space stations in a system.

89. The Commission seeks comment on all aspects of this alternative methodology for assessing space station regulatory fees. Would it be more administrable, fair, and sustainable than the existing methodology? Is it reasonable to use the number of authorized space stations in a system to reflect the amount of FTE resources devoted to a system, as proposed in the alternative methodology? Is the regulatory burden of one GSO space station approximate to the regulatory burden of an NGSO system of up to 100 authorized space stations? If tiers of units are utilized, what should the number of additional authorized space stations per tier be set at? Would 500 or 1,000 additional authorized space stations be a reasonable number? Should there be a cap on the number of space stations on which tiers of units are assessed, in order to prevent NGSO systems with tens of thousands of authorized space stations from potentially being assessed a fee that is disproportionate to the amount of FTE resources devoted to licensing and regulating such systems? Should partial units be utilized instead of cut offs for tiers, as discussed in the previous paragraph? Under the alternative methodology, should small satellite fees be fixed, as proposed for changes to the existing methodology elsewhere in the *NPRM*?

90. Summarizing the proposed changes under the proposed alternative regulatory fee methodology for space

stations above, 47 CFR 1.1156 would be proposed to read as follows:

Fee category	Fee amount
Space Stations (Per Call Sign of Authorized Space Station in Geostationary Orbit or Per System of 100 or Fewer Authorized Space Stations in Non-Geostationary Orbit)	[TBD]
Space Stations (Per Tier of Up to 500 [or 1,000] Additionally Authorized Space Stations in Non-Geostationary Orbit)	[TBD]
Space Station (per license/call sign) (Small Satellites)	[TBD]

91. The Commission finds that the proposal to use the alternative methodology to assess regulatory fees for space and earth stations would be an amendment as defined in 47 U.S.C. 159(d). Such an amendment must be submitted to Congress at least 90 days before it becomes effective pursuant to 47 U.S.C. 159A(b)(2).

E. Other Matters

92. *Changing the Title of 47 CFR 1.1156.* The Commission proposes to change the title of 47 CFR 1.1156 to make it clear that it contains space and earth station regulatory fees. Currently, satellite regulatory fees are contained in 47 CFR 1.1156, which is titled, ''Schedule of regulatory fees for international services.'' The Commission proposes to rename this section as ''Schedule of regulatory fees for space and international services'' to reflect more accurately that the section contains the regulatory fees for space and earth stations, as well as the fees for international bearer circuits and submarine cables regulated by the Office of International Affairs. The current title of 47 CFR 1.1156 was accurate when all categories of fees within it were regulated by the International Bureau. After the reorganization of the International Bureau into the Space Bureau and the Office of International Affairs, the current title can cause confusion by suggesting that only the fees for regulatees of the Office of International Affairs are contained within 47 CFR 1.1156. The Commission tentatively concludes that it would be easier to change the title of 47 CFR 1.1156 than to create a new section in 47 CFR part 1, subpart G, containing space and earth station regulatory fees. The Commission seeks comment on this tentative conclusion and proposal.

93. *Digital Equity and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed in the *NPRM.* Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority. The *NPRM* notes that diversity and equity considerations, however, do not allow the Commission to shift fees from one party of fee payors to another, nor to use fees under 47 U.S.C. 159 for any purpose other than as an offsetting collection in the amount of the Commission's annual S&E appropriation.

94. *Space Innovation Agenda.* The Commission has an open proceeding on advancing opportunities for innovation in the new space age by taking measures to expedite the application processes for space stations and earth stations, consistent with the Commission's objective to promote a competitive and innovative global telecommunications marketplace via space services'' In September 2023, the Commission adopted a Report and Order (Dec. 6, 2023, 88 FR 84737) that further streamlined its application review process, including establishing clear timeframes for placing space and earth station applications on public notice. The Commission also sought comment on several proposed changes to further streamline the licensing process and reduce applicant and staff burdens in a Further Notice of Proposed Rulemaking (Dec. 8, 2023, 88 FR 85553). Finally, the Commission announced a Transparency Initiative with the goal of providing information and guidance, in a variety of forms, to interested parties so they can understand the Commission's procedures and what is needed to obtain authorization for their proposed space station and earth station operations. The Commission seeks comment, generally, how that proceeding and initiative might inform its consideration of the issues raised in the *NPRM.*

IV. Initial Regulatory Flexibility Analysis

95. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *NPRM.* Written comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *NPRM* indicated on the **DATES** section of this document and must have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

A. Need for, and Objective of, the Proposed Rules

96. The Commission is required by Congress pursuant to 47 U.S.C. 159 to assess and collect regulatory fees each year to recover the regulatory costs associated with the Commission's oversight and regulatory activities in an amount that can reasonably be expected to equal the amount of its annual appropriation. As part of last year's adoption of regulatory fees, the Commission noted that FY 2023 would be the last year where the Commission will do so for the International Bureau, given the creation of the Space Bureau, and Office of International Affairs. The Commission also noted that an examination of the regulatory fees, and categories for NGSO space stations would be useful in light of changes resulting from the creation of the Space Bureau, and as part of a more holistic review of the FTE burden of the Space Bureau in FY 2024.

97. The *NPRM* commences the examination and review of regulatory fees for space and earth station payors regulated by the new Space Bureau, specifically seeking comment on a range of proposed changes to the assessment of regulatory fees for space and earth stations under the existing methodology. It proposes to: (1) change the allocation of fee burdens between GSO and NGSO space stations and maintain the existing allocation of fee burdens between the categories of ''less complex'' and ''other'' NGSO space stations; (2) create new fee categories within the existing fee category of ''Space Station (Non-Geostationary

Orbit)—Other'' to make assessment of the Commission's regulatory fees fairer, more administrable, and more sustainable; (3) set the regulatory fee for ''Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)'' for FY 2024 and future fiscal years at the level set for FY 2023, annually adjusted to reflect the percentage change in the appropriation from the previous fiscal year; (4) include, on an interim basis, space stations that are principally used for RPO or OOS, including OTV, in the existing fee category for ''small satellites'' until the Commission can develop more experience in how these space stations will be regulated; (5) assess regulatory fees on all authorized space stations, not just on operational space stations, in order to adhere more closely to the framework of 47 U.S.C. 159, and to make the Commission's fees fairer, more administrable, and more sustainable; and (6) increase the allocation of fees payable by earth station licensees in order to reflect more accurately the fee burden attributable to their licensing and regulation and seek comment on whether additional earth station fee categories should be created.

98. Additionally, the *NPRM* proposes to amend the title of 47 CFR 1.1156, currently titled ''Schedule of regulatory fees for international services,'' to clarify that the rule includes space and earth station regulatory fees, following the reorganization of the Commission's International Bureau. The *NPRM* also proposes an alternative methodology for assessing space station regulatory fees by eliminating the separate categories of regulatory fees for GSO and NGSO space stations, as well as existing subcategories for NGSO space stations, while retaining the existing separate regulatory fee category for small satellites and spacecraft licensed under 47 CFR 25.122 through 25.123. The goal of these proposals is to update the regulatory fees and categories for earth and space stations in light of changes resulting from the creation of the Space Bureau and as part of a more holistic review of the regulatory fees for earth and space stations in FY 2024.

B. Legal Basis

99. The proposed action is authorized pursuant to 47 U.S.C. 154(i) and (j), 159, 159A, and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

100. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

101. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

102. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

103. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 5ll governmental jurisdictions.''

104. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.

105. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service—DIRECTV (owned by AT&T) and DISH Network—which require a great deal of capital for operation. DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, the Commission must conclude, based on internally developed Commission data, in general DBS service is provided only by large firms.

106. *Fixed Satellite Small Transmit/Receive Earth Stations.* Neither the SBA nor the Commission have developed a small business size standard specifically applicable to Fixed Satellite Small Transmit/Receive Earth Stations. Satellite Telecommunications is the closest industry with an SBA small business size standard. The SBA size standard for this industry classifies a business as small if it has $38.5 million or less in annual receipts. For this industry, U.S. Census Bureau data for 2017 show that there was a total of 275

firms that operated for the entire year. Of this total, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

107. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* Neither the SBA nor the Commission have developed a small business size standard specifically applicable to Fixed Satellite VSAT Systems. A VSAT is a relatively small satellite antenna used for satellite-based point-to-multipoint data communications applications. VSAT networks provide support for credit verification, transaction authorization, and billing and inventory management. Satellite Telecommunications is the closest industry with an SBA small business size standard. The SBA size standard for this industry classifies a business as small if it has $38.5 million or less in annual receipts. For this industry, U.S. Census Bureau data for 2017 show that there were a total of 275 firms that operated for the entire year. Of this total, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

108. *Home Satellite Dish (HSD) Service.* Home Satellite Dish (HSD) or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the industry category of Wired Telecommunications Carriers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year. Of this total, 2,964 firms operated with fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

109. *Mobile Satellite Earth Stations.* Neither the SBA nor the Commission have developed a small business size standard specifically applicable to Mobile Satellite Earth Stations. Satellite Telecommunications is the closest industry with a SBA small business size standard. The SBA small business size standard classifies a business with $38.5 million or less in annual receipts as small. For this industry, U.S. Census Bureau data for 2017 show that there were 275 firms that operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Thus, for this industry under the SBA size standard, the Commission estimates that the majority of Mobile Satellite Earth Station licensees are small entities. Additionally, based on Commission data as of February 1, 2024, there were 16 Mobile Satellite Earth Stations licensees. The Commission does not request nor collect annual revenue information and is therefore unable to estimate the number of mobile satellite earth stations that would be classified as a small business under the SBA size standard.

110. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are included in the Wired Telecommunications Carriers' industry which includes wireline telecommunications businesses. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this total, 2,964 firms operated with fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

111. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

112. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.,* dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

113. The *NPRM* does not propose any changes to the Commission's current information collection, reporting, recordkeeping, or compliance requirements for small entities. Small and other regulated entities are required to pay regulatory fees on an annual basis. The cost of compliance with the annual regulatory assessment for small entities is the amount assessed for their regulatory fee category and should not require small entities to hire professionals to comply.

114. Small entities that qualify can take advantage of the exemption from payment of regulatory fees allowed under the de minimis threshold. In addition, small entities may request a waiver, reduction, deferral, and/or installment payment of their regulatory fees. The waiver process is an easier filing process for smaller entities that may not be familiar with the Commission's procedural filing rules.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

115. The RFA requires an agency to describe any significant, specifically business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

116. The *NPRM* seeks comment on a number of amendments to the existing methodology of assessing regulatory fees paid by space and earth station payors. While the *NPRM* initiates the examination and review of regulatory fees for space and earth station payors under the existing regulatory fee methodology, the Commission will propose and finalize the regulatory fee rates for space and earth station payors as part of its annual Commission-wide regulatory fee proceeding for FY 2024. Commenters will have an opportunity in that proceeding to provide comments on the proposed regulatory fee rates for space and earth station payors. The *NPRM* gives parties an opportunity to file comments on possible changes to the existing methodology for assessing space and earth station regulatory fees. If any of these proposals are adopted, it may reduce the regulatory fee burden on some satellite entities.

117. Specifically, the *NPRM* seeks comment on a proposal to divide the existing regulatory fee subcategory of ''Space Stations (Non-Geostationary Orbit)—Other'' into two tiers: ''Large Constellations'' of more than 1,000 authorized space stations; and ''Small Constellations'' of 1,000 or fewer authorized space stations. The current single regulatory fee for all NGSO ''other'' space station payors has resulted in requests by fee payors of smaller NGSO systems seeking to be assessed regulatory fees as NGSO ''less complex'' systems. If adopted, the proposal for the tiered approach for the NGSO space station ''other'' category would likely reduce the regulatory fee burden on smaller satellite constellations, and likely on smaller entities.

118. As another example, the *NPRM* notes that, based on preliminary calculations, the fee amount for the small satellite category for FY 2024 could be substantially greater than the fee assessed for FY 2023. The *NPRM* proposes that the administrability and sustainability of regulatory fees for small satellites would be better served by treating them as the Commission has historically treated the regulatory fees for earth stations—that is, a fixed regulatory fee that is adjusted from year-to-year on, rather than as a percentage of the Space Bureau's overall share of regulatory fee allocation, or as a percentage of other categories of space station fee payors. This proposal if adopted would significantly minimize the economic impact of regulatory fees potentially faced by small satellites.

119. The *NPRM* also proposes, on an interim basis, to assess regulatory fees on spacecraft primarily performing RPO and OOS by including them in the existing regulatory fee category ''Space Stations (per license/call sign in non-geostationary orbit) (Small Satellites)'' regardless of the orbit in which they are designed to operate in. The Space Bureau has received relatively few applications for RPO or OOS space stations, and although it anticipates receiving more in the near future, the amount of FTE resources required at the present time to regulate these services is more similar to that presented by small satellite space station licensees, which are also few in number, and involve a relatively small number of space stations that have limited duration and scope of use and operate using shared spectrum resources. Therefore, the *NPRM* tentatively concludes that the purposes of 47 U.S.C. 159 would be best met by erring on the side of caution and assessing regulatory fees under the category of fees associated with the least-burdensome set of space station regulates which would result in lower regulatory fees, and have less economic impact.

120. The *NPRM* also seeks comment on possibly creating subcategories of earth station regulatory fee payors to better differentiate the amount of regulatory burdens associated with different types of earth station licenses. This may reduce the regulatory fee burden on some smaller earth station payees who could face a substantial increase in the per unit regulatory fee if the Commission adopts the proposal in the *NPRM* to apportion 20% of all Space Bureau regulatory fees to earth station licensees beginning in FY 2024.

121. Finally, the *NPRM* seeks comment on an alternative methodology for assessing space station regulatory fees that eliminates the distinction between GSO, NGSO, and all the subcategories of NGSO, while preserving a separate fee category for small satellites. The alternative methodology would have a single category for ''Space Stations (Per Call Sign in Geostationary Orbit or Per System in Non-Geostationary Orbit),'' which would be tiered, with a single GSO space station or a NGSO system with up to 100 authorized space stations constituting the first tier and being counted as one unit for assessment of space station regulatory fees, and additional tiers added to account for NGSO systems with more than 100 authorized space stations, with the possibility of 500 or 1,000 additional space stations per NGSO system per tier. Each tier would be counted as an additional unit for assessment of space station regulatory fees. Accordingly, GSO payors and NGSO systems of 100 authorized space stations or fewer would be assessed the lowest regulatory fees, while payors with multiple authorized GSO space stations, or with NGSO systems with more than 100 authorized space stations would be assessed higher regulatory fees, with the highest regulatory fees assessed to payors with a large number of GSO space stations, and to payors with NGSO systems consisting of thousands of authorized space stations. The Commission believes this alternative methodology could be more administrable, fair, and sustainable than the existing methodology, and the *NPRM* seeks comment on all aspects of this alternative methodology for assessing space station regulatory fees.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

122. None.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–05996 Filed 3–22–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 8

[PS Docket Nos. 23–239; FR ID 210016]

Cybersecurity Labeling for Internet of Things

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) adopts a voluntary cybersecurity labeling program for wireless consumer Internet of Things, or IoT, products. The final rule also requires applicant manufacturers to make certain disclosures related to their product(s) for authorization to use the FCC IoT Label. This is a summary of the Further Notice of Proposed Rulemaking (Further Notice), in which the Commission proposes rules on additional national security declarations for the IoT labeling program. These requirements would further help consumers make safer purchasing decisions, raise consumer confidence regarding the cybersecurity of the IoT products they buy, and encourage manufacturers to develop IoT products with security-by-design principles in mind.

DATES: Comments are due on or before April 24, 2024 and reply comments are due on or before May 24, 2024. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 24, 2024.

ADDRESSES: You may submit comments, identified by PS Docket No. 23–239, by any of the following methods:

- *Federal Communications Commission's Website: https://www.apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*
- *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: For further information regarding these proposed rules, please contact Zoe Li, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–2490, or by email to *Zoe.Li@fcc.gov.*

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele, Office of Managing Director, Performance Evaluation and Records Management, 202–418–2991, or by email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM), FCC 24–26, adopted March 14, 2024, and released March 15, 2024. The full text of this document is available by downloading the text from the Commission's website at: *https://docs.fcc.gov/public/attachments/FCC-24-26A1.pdf.*

Synopsis

Further Notice of Proposed Rulemaking

1. In this FNPRM, we seek comment on additional declarations intended to provide consumers with assurances that the products bearing the FCC IoT Label do not contain hidden vulnerabilities from high-risk countries, that the data collected by the products does not sit within or transit high-risk countries, and that the products cannot be remotely controlled by servers located within high-risk countries. Specifically, we seek comment on whether we should require manufacturers to disclose to the Commission whether firmware and/or software were developed and manufactured in a ''high-risk country,'' as well as where firmware and software updates will be developed and deployed from. We also seek comment on whether to require manufacturers to disclose to consumers in the registry whether firmware and/or software were developed and manufactured in a ''high-risk country,'' as well as where firmware and software updates will be developed and deployed from. We propose to include as high-risk countries those foreign adversary countries defined by the Department of Commerce in 15 CFR 7.4. Are there other sources that the Commission should consider for identifying high-risk countries? Specifically, we seek comment on whether to require the applicant seeking to use the FCC IoT Label to make one of the following declarations under penalty of perjury to accompany its application to use the label:

a. No software or software update or part of any software or software update that runs on or controls the product was or will be developed or deployed from within a country on the Secretary of Commerce's list of high-risk countries, except that this commitment does not apply to the origin of open-source contributions not paid for directly or indirectly by us or our direct or indirect partners in offering this product; or

b. This device runs, or due to future software updates might run, software developed within the Secretary of Commerce's list of high-risk country or countries. Applicant is not aware of any backdoors or other sabotage, or any reason to believe that there is a particular heightened risk for such backdoors or sabotage relative other software developed within such a country, but we inform purchasers and users that the Department of Commerce has designated high-risk country or countries as jurisdictions whose conduct is significantly adverse to the national security of the United States or

security and safety of United States persons.

2. We also seek comment on requiring manufacturers to disclose to the Commission whether the data collected by the product is stored in or transits a high-risk country or countries. We also seek comment on whether to require manufacturers to disclose to consumers in the registry whether the data collected by the product is stored in or transits a country or countries that are known to pose a national security risk to the United States. Does the manufacturer have sufficient knowledge of the data collected by the device to know where the servers hosting the collected data are located or where the servers remotely controlling the device will be located? Is it possible for the location of stored data to be changed without the manufacturer's knowledge? Are there other factors that would impact the manufacturer's ability to make these declarations. Specifically, we seek comment on requiring the applicant seeking to use the FCC IoT Label to make one of the following declarations under penalty of perjury to accompany its application to use the label:

a. No customer data collected by this product will be sent to servers located on the Department of Commerce's list of high-risk countries, defined at 15 CFR 7.4 or any successor regulation. No servers that remotely control the device will be located in such a country; or

b. Customer data collected by this product will be sent to servers located in a high-risk country or countries. We inform purchasers and users that the Secretary of Commerce has designated high-risk country or countries as jurisdictions whose conduct is significantly adverse to the national security of the United States or security and safety of United States persons.

3. If a manufacturer must disclose one of these exposures or potential exposures to a high-risk country, should it have to disclose additional information as well? Should it have to disclose the identity of the high-risk country or countries? Should it have to disclose the specific hardware or software components or server activities that did, will, or could originate from or take place in those countries? How could such disclosures help purchasers make informed decisions about product acquisitions? And what burdens would such additional disclosures place on manufacturers? Should we require manufacturers to include this information in the registry to inform consumers of these issues?

4. Alternatively, should the fact that software or firmware originates from such countries, that data will be stored in such countries, or that products can be remotely controlled by servers within such countries, make products ineligible for the label altogether? Are there certain product components, such as cellular interface modules, that pose elevated risks for which such a prohibition might specifically be warranted?

5. With respect to these declarations proposed to require the manufacturer to inform the Commission, would such information provide meaning to consumers? Should we require manufacturers to include this information in the registry to inform consumers of these issues? How would manufacturers inform users who are not purchasers? In addition, we seek comment on the possible costs and benefits of requiring any additional language in the relevant product's registry page. Should they encompass some or all of the same representations made in an application for authorization to use the FCC label, or should they be different or additional? Can such representations be made not just for the benefit of the purchaser or user, but also extend to any third parties who may be impacted by a security vulnerability in a labeled product attributable to a failure of the manufacturer, and what would the practical or legal implications of that be? How might this influence manufacturer participation in the program? Could the federal Magnuson-Moss Act be an additional legal overlay here, as well? How should those state and federal laws inform whether and how the Commission requires manufacturer or seller representations in the product's registry page?

Procedural Matters

6. *Paperwork Reduction Act.* This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Bureau does not believe that the new or modified information collection requirements we adopt here will be unduly burdensome on small businesses.

7. In this present document, we have assessed the effects of the operational framework for a voluntary IoT cybersecurity labeling program. Since the IoT Labeling Program is voluntary, small entities who do not participate in the IoT Labeling Program will not be subject to any new or modified reporting, recordkeeping, or other compliance obligations. Small entities that choose to participate in the IoT Labeling Program by seeking authority to affix the Cyber Trust Mark on their products will incur recordkeeping and reporting as well as other obligations that are necessary to test their IoT products to demonstrate compliance with the requirements we adopt today. We find that, for the Cyber Trust Mark to have meaning for consumers, the requirements for an IoT product to receive the Cyber Trust Mark must be uniform for both small businesses and other entities. Thus, the Commission continues to maintain the view we expressed in the *IoT Labeling NPRM,* that the significance of mark integrity, and building confidence among consumers that devices and products containing the Cyber Trust Mark label can be trusted to be cyber secure, necessitates adherence by all entities participating in the IoT Labeling Program to the same rules regardless of size.

8. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix B of the FCC's *Report and Order and Further Notice of Proposed Rulemaking,* FCC 24–26, adopted March 14, 2024, at this link: *https://docs.fcc.gov/public/attachments/FCC-24-26A1.pdf.*

9. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals on small entities in the FNPRM. The IRFA is set forth in Appendix C of the FCC's *Report and Order and Further Notice of Proposed Rulemaking,* FCC 24–26, adopted March 14, 2024, at this link: *https://docs.fcc.gov/public/attachments/FCC-24-26A1.pdf.* The Commission invites the general public,

in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the FNPRM indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

10. *OPEN Government Data Act.* The OPEN Government Data Act requires agencies to make ''public data assets'' available under an open license and as ''open Government data assets,'' *i.e.,* in machine-readable, open format, unencumbered by use restrictions other than intellectual property rights, and based on an open standard that is maintained by a standards organization. This requirement is to be implemented ''in accordance with guidance by the Director'' of the OMB. The term ''public data asset'' means ''a data asset, or part thereof, maintained by the Federal Government that has been, or may be, released to the public, including any data asset, or part thereof, subject to disclosure under the Freedom of Information Act (FOIA).'' A ''data asset'' is ''a collection of data elements or data sets that may be grouped together,'' and ''data'' is ''recorded information, regardless of form or the media on which the data is recorded.'' We delegate authority, including the authority to adopt rules, to the Bureau, in consultation with the agency's Chief Data Officer and after seeking public comment to the extent it deems appropriate, to determine whether to make publicly available any data assets maintained or created by the Commission within the meaning of the OPEN Government Act pursuant to the rules adopted herein, and if so, to determine when and to what extent such information should be made publicly available. Such data assets may include assets maintained by a CLA or other third-party, to the extent the Commission's control or direction over those assets may bring them within the scope of the OPEN Government Act, as interpreted in the light of guidance to be issued by OMB.[1] In doing so, the Bureau shall take into account the extent to which such data assets are subject to disclosure under the FOIA.

11. *Ex Parte Rules—Permit-But-Disclose.* The proceeding this *Further Notice of Proposed Rulemaking* initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

12. *Comment Filing Procedures.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

13. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this document will be available on *https://www.fcc.gov/proposed-rulemakings.*

Legal Basis

14. The proposed action is authorized pursuant to sections 1, 2, 4(i), 4(n), 302, 303(r), 312, 333, and 503, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(n), 302a, 303(r), 312, 333, 503; and the IoT Cybersecurity Improvement Act of 2020, 15 U.S.C. 278g–3a through 278g–3e.

Initial Regulatory Flexibility Analysis

15. An Initial Regulatory Flexibility Act (IRFA) Analysis for the rules proposed in the FNPRM was prepared and can be found as Exhibit B of the FCC's Second Report and Order and Further Notice of Proposed Rulemaking, FCC 24–5, adopted January 26, 2024, at this link: *https://docs.fcc.gov/public/attachments/FCC-24-26A1.pdf.*

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

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[1] OMB has not yet issued final guidance.

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 671

[Docket No. FTA–2023–0024]

RIN 2132–AB41

Rail Transit Roadway Worker Protection

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Transit Administration (FTA) is proposing minimum safety standards for rail transit roadway worker protection (RWP) to ensure the safe operation of public transportation systems and to prevent accidents, incidents, fatalities, and injuries to transit workers who may access the roadway in the performance of work. This NPRM would apply to rail transit agencies (RTAs) covered by the State Safety Oversight (SSO) program, SSO agencies (SSOAs), and rail transit workers who access the roadway to perform work. It would set minimum standards for RWP program elements, including an RWP manual and track access guide; requirements for on-track safety and supervision, job safety briefings, good faith safety challenges, and reporting unsafe acts and conditions and near-misses; development and implementation of risk-based redundant protections for workers; and establishment of RWP training and qualification and RWP compliance monitoring activities. RTAs

would be expected to comply with these Federal standards as a baseline and use their existing Safety Management System (SMS) processes to determine any additional mitigations appropriate to address the level of RWP risk identified. SSOAs would oversee and enforce implementation of the RWP program requirements.

DATES: Comments should be filed by May 24, 2024. FTA will consider comments received after that date to the extent practicable.

ADDRESSES: You may send comments, identified by docket number FTA–2023–0024 by any of the following methods:

- *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery/Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program matters, contact Ms. Margaretta ''Mia'' Veltri, Office of Transit Safety and Oversight, FTA, telephone at (202) 366–5094 or *margaretta.veltri@dot.gov.* For legal matters, contact Ms. Emily Jessup, Attorney Advisor, FTA, telephone at 202–366–8907 or *emily.jessup@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

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I. Executive Summary

A. Purpose and Summary of Regulatory Action

The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management System (SMS) as the basis for enhancing the safety of public transportation in the United States. As part of its internal SMS, FTA established a Safety Risk Management (SRM) program to proactively address safety concerns impacting the transit industry and to systematically apply FTA's statutory oversight authority to improve the safety of the nation's transit infrastructure through the Public Transportation Safety Program.

The process follows a five-step approach: (1) identify safety concerns; (2) assess safety risk; (3) develop mitigation; (4) implement mitigation; and (5) monitor safety performance. As a result of the first two steps, FTA may develop and advance appropriate mitigations to address a safety hazard, such as proposed safety regulations, general or special directives, safety advisories, or technical assistance and training activities.

In 2019, FTA began piloting the SRM process to focus on high-priority safety risks and identified the RWP safety concern as the second topic for analysis. Through the SRM process, FTA conducted a review of the existing approaches to RWP used by the rail transit industry. This review shows that on a national level, these approaches do not adequately protect transit workers from rail transit vehicles and other roadway hazards. As a result, FTA has determined that a Federal baseline RWP program is an appropriate mitigation and is proposing this regulation to reduce fatalities and serious injury events involving rail transit workers that occupy the rail roadway during hours of operation.

This NPRM would require RTAs covered by the SSO program under 49 CFR part 674 (Part 674) to implement a minimum, baseline RWP program to provide a standardized and consistent approach to protecting roadway workers industry-wide, overseen and enforced by SSOAs. Using the Federal standards as a baseline, FTA would expect RTAs to use their existing documented safety risk management processes to assess the associated safety risk and, based on the results of the safety risk assessment, identify the specific safety risk mitigations or strategies necessary to address the safety risk.

This NPRM would prohibit the use of individual rail transit vehicle detection as a sole form of protection for workers on the roadway. It would set requirements for RTAs to conduct a safety risk assessment to identify and establish redundant protections for each category of work roadway workers perform on the roadway or track. Redundant protections may include procedures, such as foul time and advance warning systems, and also physical protections to stop trains in advance of workers, such as derailers and shunts. The safety risk assessment and redundant protections would be reviewed and approved by the SSOA, along with other elements of the RTA's RWP program.

The safety risk assessment would be consistent with the RTA's Agency Safety Plan and the SSOA's Program Standard. RTAs may supplement the safety risk assessment with engineering assessments, inputs from the Safety Assurance process established under 49 CFR 673.27, the results of safety event investigations, and other safety risk management strategies and approaches.

To ensure effective implementation and oversight of the RWP program and redundant protections, this NPRM also would specify RWP training and compliance monitoring activities, supplemented by near-miss reporting and SSOA oversight and auditing.

B. Statutory Authority

Congress directed FTA to establish a Public Transportation Safety Program in the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141) (MAP–21), which was reauthorized by the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94). The Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58), continues FTA's authority to regulate public transportation systems that receive Federal financial assistance under Chapter 53. Title 49 U.S.C. 5329(f)(7) authorizes FTA to issue rules to carry out the public transportation safety program.

Title 49 U.S.C. 5329(b)(2) directs FTA to develop and implement a National Public Transportation Safety Plan (NSP) that includes minimum safety standards

to ensure the safe operation of public transportation systems. In 2017, FTA published its first iteration of the National Safety Plan which was intended to be FTA's primary tool for communicating with the transit industry about its safety performance (82 FR 5628). Subsequently, on May 31, 2023, FTA published a second iteration of the NSP (88 FR 34917). While the NSP currently contains only voluntary standards, as FTA's safety program has matured, it is now appropriate for FTA to propose required minimum standards for RWP. Pursuant to the Administrative Procedure Act (5 U.S.C. 553), FTA is proposing these minimum standards for public notice and comment through the rulemaking process.

II. Background Informing FTA's Proposals

A. Rail Transit Industry Safety Performance

Rail transit employees and contractors who work on the roadway, also known as roadway workers, face numerous on-the-job hazards. Working on the roadway exposes workers to moving rail transit vehicles and electrified system components. Weather, including rain, snow, and heat can create conditions that cause slips, trips, and falls; hypothermia; and heat stroke. Surrounding automobile traffic can limit the ability to hear trains and warnings from watchpersons. Tight clearances, restricted visibility, varying distances from the track to places of safety, and the potential need to clear between rail transit vehicles make tunnels, bridges and aerial structures, locations with more than two tracks, and shared-use roadway (*e.g.,* streets with mixed traffic) make roadways particularly challenging work environments. Adjacent construction and public utilities pose additional safety challenges. Faster trains, more frequent headways, and shorter non-revenue maintenance windows all increase worker exposure to the risk of being struck by a train or electrocuted.

RTAs manage these risks using a variety of RWP programs, including systems and approaches designed to safeguard roadway workers through rules and procedures, training and supervision, communication protocols and technology, and on-track protection. Many existing RWP programs implemented by RTAs use elements from the Federal Railroad Administration (FRA) RWP regulations contained in 49 CFR part 214, subpart C—Roadway Worker Protection, modified to address the RTA's unique operating conditions and requirements. SSOAs typically review implementation of these RWP programs as part of their triennial audits of the RTAs in their jurisdictions.

Notwithstanding the use of RWP programs throughout the rail transit industry, roadway workers continue to be killed and seriously injured in roadway safety events. For example, in October 2022, two roadway workers on the Port Authority Transit Corporation (PATCO) roadway were struck and killed by a PATCO revenue service vehicle traveling through a close-clearance area. Preliminary information indicates the track was not taken out-of-service as expected, and the incident is currently under investigation by the National Transportation Safety Board (NTSB) (investigation number RRD23FR001). Roadway worker events continue to comprise the majority of transit worker fatalities for RTAs.

This NPRM follows FTA's review of safety events involving roadway workers, dating back to 2008, including information reported to the National Transit Database (NTD) and State Safety Oversight Reporting Tool (SSOR); investigations completed by NTSB, including 12 recommendations issued by NTSB to FTA since 2012 regarding needed improvements in the RWP programs administered in the U.S. rail transit industry; data and information submitted in response to FTA's request for information (RFI) on transit worker safety (86 FR 53143); and analysis completed as part of FTA's internal Safety Risk Management process.

FTA's review is also informed by older information on accidents involving roadway workers collected from the NTD and the SSO program dating back to 1994 and the results of an inventory of RWP practices used in the rail transit industry, collected in 2014 in response to FTA's Safety Advisory 14–1: Inventory of Practice and Analysis (*https://www.transit.dot.gov/oversight-policy-areas/safety-advisory-14-1-right-way-worker-protection-december-2013*). Finally, FTA considered recommendations from the Transit Advisory Committee for Safety (TRACS),[1] voluntary safety standards developed by the American Public Transportation Association (APTA), and the results of research conducted by the Transit Cooperative Research Program (TCRP) (see: *https://www.trb.org/Publications/Blurbs/166925.aspx*) and FTA's Office of Research, Demonstration and Innovation (*https://www.transit.dot.gov/research-innovation/fta-standards-development-program-rail-transit-roadway-worker-protection-report*).

FTA's review finds that, dating back to 1994, 52 rail transit workers have been killed and over 200 workers have experienced major injuries resulting from safety events on the roadway, primarily resulting from collisions with rail transit vehicles, falls and electrocution. More detailed data covering the almost 15-year period between January 1, 2008 and October 31, 2022 is available from the NTD. During this time, 22 workers have been killed and 120 workers seriously injured in accidents on the roadway. This equates to approximately 1.5 workers killed per year and just over eight workers seriously injured per year.

To ensure FTA's analysis of existing RWP practices compares reasonably similar RWP programs and outcomes, this analysis, dating back to 2008, which supports the cost benefit statement for this proposed NPRM, does not include incidents occurring in the State of California, where roadway workers have been protected by General Order 175–A, ''Rules and Regulations Governing Roadway Worker Protection provided by Rail Transit Agencies and Rail Fixed Guideway Systems'' since 2016. While there is evidence that dozens more workers are injured less seriously each year in incidents on the roadway, the NTD does not provide sufficient detail on these incidents to support substantive analysis.

Based on this review, FTA finds that existing programs used in the rail transit industry do not adequately mitigate the risks of placing workers on the roadway. FTA agrees with NTSB that weaknesses in current programs leave all RTAs ''at risk for roadway worker fatalities and serious injuries'' (see *https://www.ntsb.gov/safety/safety-recs/RecLetters/R-13-039-040.pdf*). Further, FTA believes that SSOAs can do more to oversee and enhance the safety of roadway workers in their jurisdictions, in accordance with the SSOAs' authority under 49 CFR part 674.

Many of the safety events in FTA's review primarily or tangentially involve RWP protections that rely solely on the ability of the roadway worker to detect oncoming rail transit vehicles. This approach is vulnerable to human error, such as miscalculating sight distance and generally underestimating the time

[1] The Transit Advisory Committee for Safety (TRACS) was established in 2009 by the U.S. Transportation Secretary to improve transit safety. TRACS provides information, advice, and recommendations on transit safety and other issues as determined by the Secretary of Transportation and the FTA Administrator. TRACS's membership reflects the geographic, size, and issue diversity across the transit industry and includes members from large and small bus and rail operators, state safety oversight agencies, academia, non-profit organizations, and labor unions.

needed for workers to clear tracks. In many of the events reviewed by FTA, the roadway workers were not sufficiently aware of the immediate hazards they faced when working on the rail transit roadway. Many of these events were caused by roadway workers' lack of awareness of the presence or speed of approaching trains; lack of train visibility in curves or aerial structures; and the time required to move to a place of safety. Contributing to many of these events were the train operators' lack of awareness regarding the roadway workers' locations and insufficient time to slow and stop the trains before striking those workers.

FTA's review confirms that reliance on the roadway worker to detect rail transit vehicles lacks safety redundancy and does not provide sufficient physical or procedural protections to ensure worker safety. Physical redundant protections are technological or mechanical interventions that physically stop a train from striking a roadway worker, such as a derailer or shunt in the signal system. Procedural redundant protections are rules-based interventions that rely on worker training and compliance, such as the use of foul time to clear the track for workers.

FTA's review of these safety events also found that weaknesses in job safety briefings contributed to these events, placing roadway workers in situations where they may not have recognized the hazards of their work sites or the requirements of protection. Also, insufficient training and poor work scheduling practices left workers vulnerable to errors of judgement and fatigue that contributed to poor decision-making on the roadway.

While FTA's review finds that the majority of RWP fatalities and serious injuries have happened on heavy rail transit systems, other rail systems, including light rail and automated guideways, have also experienced fatal RWP accidents and serious injuries. Further, while most of these agencies have top train speeds in excess of 45 miles per hour, the conditions that make these events possible are present at all RTAs nationwide—even those agencies that provide service at slower speeds, with single rail cars, or more limited track configurations.

B. Recommendations From the National Transportation Safety Board

Since 2008, NTSB has issued 12 safety recommendations to FTA based on its investigation of rail transit RWP safety events. These recommendations focus on the need for Federal regulation, minimum RWP requirements, enhancements in job safety briefings, and RWP training programs for the rail transit industry. NTSB also has recommended that RTAs use redundant protection when workers are on the roadway. A discussion of roadway worker safety events that occurred on the roadway follows below, along with the relevant NTSB recommendation and associated FTA action.

On January 26, 2010, a hi-rail vehicle—a truck or automobile that can be operated on either highways or rails—struck and fatally injured two technicians who were working on the roadway replacing equipment between the tracks at the Washington Metropolitan Area Transit Authority (WMATA). On June 1, 2012, following its investigation at WMATA, NTSB recommended that FTA, ''Issue guidelines to advise transit agencies and state oversight agencies on how to effectively implement, oversee, and audit the requirements of [the SSO program] using industry best practices, industry voluntary standards, and appropriate elements from 49 Code of Federal Regulations Part 214, Subpart C—Roadway Worker Protection [*sic*]. (R–12–34).''

To address this recommendation, FTA sent each RTA a package of RWP materials and guidance, including the results of FTA-sponsored research with the TCRP of the Transportation Research Board (TRB) at the National Academies of Science regarding RWP and rules compliance. FTA also provided updates on joint technology demonstration projects with the Metropolitan Atlanta Rapid Transit Authority (MARTA) and the Maryland Transit Administration (MTA) to support the piloting and testing of technology to help alert workers to the presence of trains and train operators to the presence of workers on the tracks. Finally, FTA re-issued an awareness video, developed in collaboration with WMATA, New York City Transit, and Transport Workers Union Local 100 in response to earlier RWP-related worker accidents, called ''A Knock at Your Door'' (*http://www.youtube.com/watch?v=31XyWpQCWRc*). This video is designed to reinforce the dangers and challenges of working on the rail transit right-of-way and now is used by RTAs in their track safety training programs.

In response to a December 19, 2013, safety event resulting in two roadway worker fatalities on the Bay Area Rapid Transit (BART) system, NTSB issued two urgent safety recommendations to FTA, citing concerns that the current RWP programs in place in the rail transit industry may not be effective. NTSB recommended that FTA immediately:

- Issue a directive to all rail transit properties requiring redundant protection for roadway workers, such as positive train control, secondary warning devices, or shunting (R–13–39); and
- Issue a directive to require transit properties to review their wayside worker rules and procedures and revise them as necessary to eliminate any authorization that depends solely on the roadway worker to provide protection from trains and moving equipment (R–13–40).

To respond initially to these urgent safety recommendations, on December 31, 2013, FTA issued Safety Advisory 14–1: Right-of-Way Worker Protection to provide guidance to SSOAs and RTAs on redundant protections for workers. Safety Advisory 14–1 also requested information from RTAs and SSOAs regarding RWP program elements and level of implementation in the rail transit industry, as well as assessments from each RTA documenting the safety hazards and mitigations in place at their agencies to protect workers on the roadway.

FTA's Safety Advisory 14–1 also included RWP best practices developed from the findings of 28 investigations of rail transit roadway worker fatalities from 2002 through 2013. Effective practices in flagging and redundant protection, roadway work scheduling, communication rules, and other practices were detailed in the advisory. Methods for improving existing practices, such as rules compliance testing, job safety briefings and training, were also detailed to assist transit agencies in improving their RWP processes and procedures.

In addition, FTA provided new resources to assist the SSO program and States in conducting activities such as audits, investigations, and inspections related to Safety Advisory 14–1. Beginning in Fiscal Year (FY) 2013, FTA established its grant program for SSOAs pursuant to 49 U.S.C. 5329(e)(6) and issued approximately $22 million per year to States to fund staffing and training for SSO program managers, staff, and contractors. FTA has continued to provide technical assistance and training to SSOA staff through the Transportation Safety Institute, the National Transit Institute, and a 2018 SSOA workshop session, including sessions focused on oversight of RWP program elements.

Further, on September 24, 2014, NTSB released its Special Investigation Report on Railroad and Rail Transit Roadway Worker Protection (SIR 14–

03). In this report, NTSB identified and discussed the circumstances of 15 railroad and rail transit worker deaths in 2013 and issued eight additional safety recommendations to FTA, including five directly related to proposals in this NPRM:

- Require initial and recurring training for roadway workers in hazard recognition and mitigation. Such training should include recognition and mitigation of the hazards of tasks being performed by coworkers (R–14–36);
- With assistance from the FRA and OSHA, establish roadway worker protection rules, including requirements for job briefings (R–14–38);
- Once the action specified in Safety Recommendation R–14–38 is completed, update the state safety oversight program to ensure that rail transit systems are meeting the safety requirements for roadway workers (R–14–39);
- Establish a national inspection program that specifically includes roadway worker activities (R–14–40); and
- Revise 49 CFR part 659 to require all federally funded rail transit properties to comply with 29parts 1904, 1910, and 1926 (R–14–41).

To respond to these recommendations, FTA has worked with the rail transit industry, SSOAs, and through its internal safety program regulatory processes to focus action on needed improvements in RWP safety. Through guidance, technical assistance, training, research projects, and now proposed regulation, transit worker safety, including RWP safety, has been a major focus for FTA's safety program.

On October 30, 2015, FTA staff participated in developing the APTA Standard for On-Track System Safety Requirements, APTA RT–OP–S–21–15, as part of a cooperative agreement with the Center for Urban Transportation Research. This voluntary standard addresses RWP programs by providing minimum safety requirements for key elements noted in NTSB's Special Investigation Report on Railroad and Rail Transit Roadway Worker Protection.

This standard augments existing APTA voluntary standards that address RWP by focusing specifically on the use and movement of on-track equipment, which includes hi-rail vehicles and equipment. This voluntary standard encourages RTAs to equip all existing and new on-track equipment with certain minimum design features such as automatic change-of-direction alarms; back up alarms which provide audible signals; and alarms that are distinguishable from surrounding ambient noise, all of which will serve as secondary warning systems. This standard also encourages RTAs to develop operating procedures and guidance for the use of on-track equipment in work zone areas and along the right-of-way.

Additionally, in response to recommendation R–14–038 and to further address recommendations R–13–039 and R–13–040, FTA contributed to the development of APTA's 2016 Roadway Worker Protection Program Requirements Standard, APTA RT–OP–S–016–11. This voluntary standard encourages adherence to clear rules and procedures, appropriate training, certification and retraining, and regular monitoring of right-of-way safety compliance. It also defines minimum elements in an RTA's on-track safety program and emphasizes opportunities for redundant protection and the use of advanced worker warning technology. In January 2017, FTA issued its National Public Transportation Safety Plan, which encouraged the adoption of these voluntary APTA standards.

C. Safety Risk Analysis and Report on Rail Transit Roadway Worker Protection

In 2019, FTA initiated a safety risk analysis of the hazards associated with RWP. FTA conducted this analysis to determine additional mitigations for RWP risks as the agency worked to maintain vigilance in the protection of transit workers. FTA used the results of this safety risk assessment to support the drafting of this NPRM.

In 2021, as part of FTA's Standards Development Program, FTA issued Report No. 0212 on Rail Transit Roadway Worker Protection. This report summarized research that reviewed existing standards and best practices. The report also developed use cases, a risk assessment matrix, and high-level concepts of operations for rail transit RWP. The research report provided tools and resources that RTAs may use to address the safety risks of roadway workers performing tasks on and adjacent to rail tracks. By overlaying emerging technologies with existing policies and procedures, this report demonstrated that risk can be reduced for roadway workers.

As discussed in this report, the use of a hazard/risk assessment matrix that incorporates human factors and risk analyses and considers several use cases, and the use of secondary RWP protection devices, may help agencies to improve RWP. It also demonstrated that while available RWP technologies provide additional warning to roadway workers and train crews, they are not a primary protection source. Only through overlaying these technologies with existing procedures and practices can RTAs enhance RWP and reduce safety risk for workers.

D. Transit Worker Safety Request for Information

In September 2021, FTA published a request for information in the **Federal Register** to solicit information from the public related to transit worker safety to inform the regulatory process (86 FR 53143). FTA asked for comment on current RWP practices in the industry, including redundant protections and training, and on minimum requirements the public expected to see if FTA pursued Federal requirements for transit RWP programs. FTA received comments suggesting that classroom and field training should be required, RWP program requirements should be responsive to modal differences and differences in operating characteristics, and suggestions for specific technology or practices to improve safety (Docket FTA–2021–0012). The section-by-section analysis below identifies where FTA proposals are responsive to these comments.

E. Summary of Major Provisions

This NPRM would establish minimum safety standards to protect transit workers who may access the roadway in the performance of work.

The NPRM proposes that each RTA would adopt and implement an RWP program to improve transit worker safety that is consistent with Federal and State safety requirements and approved by the SSOA. The RWP program would be documented in a dedicated RWP manual, which would include: (1) terminology, abbreviations, and acronyms used to describe the RWP program activities and requirements; (2) RWP program elements; (3) a definition of RTA and transit worker responsibilities for the RWP program; (4) training, qualification, and supervision required for transit workers to access the roadway, by labor category or type of work performed; and (5) processes and procedures to provide adequate on-track safety for all transit workers who may access the roadway in the performance of their work, including safety and oversight personnel.

The RWP manual also would include or incorporate by reference a track access guide to support on-track safety. The track access guide would be based on a physical survey of the track geometry and condition of the transit system.

The RTA would be required to completely review and update its RWP

manual not less than every two years. This includes updates to reflect current conditions, lessons learned in implementing the RWP program as described in the manual, and information provided by the SSOA and FTA. RTAs would be required to conduct a review within two years of the SSOA's initial approval of the RWP manual and not less than every two years thereafter.

FTA's proposed rules for Public Transportation Agency Safety Plans (PTASP) would also require rail transit agencies to include or incorporate by reference in their Agency Safety Plans (ASPs) the policies and procedures regarding rail transit workers on the roadway. The ASP, and any updates to the ASP, will require approval by a joint labor-management Safety Committee. The joint labor-management Safety Committee may also, as part of its statutory responsibilities, identify RWP related safety deficiencies and identify and recommend risk-based mitigations or strategies to address RWP hazards identified in the agency's safety risk assessment.

The NPRM would prohibit the use of any protections that rely solely on the roadway worker to detect rail transit vehicles. Each RTA would be required to conduct a safety risk assessment to identify redundant protections for all workers to be included in the RWP program and manual. Protections would be based on the category of work being performed. Tasks demanding more attention from roadway workers, including the use of tools and equipment, based on the results of the safety risk assessment, likely would require RTAs to implement greater levels of protection.

In addition, the NPRM would require comprehensive job safety briefings, a good faith safety challenge provision, and required reporting of near misses. Formal training and qualification programs would be required for all workers who access the roadway. RTAs also would adopt a program for RWP program compliance auditing and monitoring.

SSOAs would be responsible for approving, overseeing, and enforcing implementation of the requirements in the NPRM for each RTA in their jurisdiction, including the RWP Manual and supporting training and qualification programs.

F. Summary of Economic Analysis

This proposed rule, which sets minimum safety standards for RWP programs, would benefit roadway workers by reducing their risk of fatalities and injuries. To estimate benefits, FTA analyzed national transit worker safety data from 2008 to 2020 and identified accidents that would have been prevented if agencies had implemented the protections in the proposed rule. On average, the rule would prevent an estimated 1.4 fatalities and 3.9 injuries per year, resulting in annual safety benefits of $14.2 million in 2021 dollars. To meet the safety standards, RTAs and SSOAs would incur an estimated $2.0 million in start-up costs plus $11.3 million in ongoing annual costs. The largest ongoing annual costs are for redundant worker protections ($5.9 million) and roadway worker protection training ($4.5 million).

Table ES–1 summarizes the potential effects of the proposed rule over a ten-year analysis period from 2023 to 2032. In 2021 dollars, the rule would have annualized net benefits of $2.6 million at a 2 percent discount rate, discounted to 2023.

TABLE ES–1—SUMMARY OF ECONOMIC EFFECTS

[2021 Dollars, discounted to 2023]

Item	Annualized value (2% discount rate)
Benefits	$13,414,248
Costs	10,848,469
Net Benefits	2,565,779

III. Section-by-Section Analysis

Subpart A—General

671.1 Purpose and Applicability

FTA proposes that this regulation would apply to RTAs that receive Federal financial assistance under 49 U.S.C. chapter 53 and to all SSOAs that oversee the safety of rail fixed guideway public transportation systems. It also specifies that this regulation would not apply to rail systems that are subject to the safety oversight of the Federal Railroad Administration.

FTA also proposes to specify that this regulation applies to transit workers who access any rail fixed guideway public transportation system in the performance of their work. FTA is proposing this applicability to encompass the RTAs and SSOAs in its SSO program and to establish protections for individuals under the RTA's purview as they access the roadway.

671.3 Policy

FTA proposes that section 671.3(a) will explain that this regulation establishes minimum safety standards for rail transit RWP. FTA proposes that each RTA and SSOA may prescribe additional or more stringent rules that are consistent with this part.

FTA further proposes that section 671.3(b) will explain that FTA has adopted the use of SMS as the basis for enhancing the safety of public transportation. Safety Risk Management and Safety Assurance, as required in part 673 of this chapter, form the basis of a transit agency's safety risk identification, assessment, mitigation, and monitoring programs. As such, FTA also proposes that any activities conducted to carry out this Part must be integrated into the RTA's SMS required under part 673 of this chapter.

671.5 Definitions

FTA proposes definitions for terms used in this part to establish a standard RWP vocabulary.

This section also includes definitions of terms used throughout FTA's safety program. Some of these terms are included in FTA's PTASP NPRM, which was issued on April 26, 2023 (88 FR 25336). FTA's intent is for terms to have the same meaning across the safety program, and FTA will reconcile overlapping terms in the appropriate rulemakings. Readers should refer, specifically, to the definitions of ''Accountable Executive,'' ''Equivalent Entity,'' ''Near-miss,'' ''Rail Fixed Guideway Public Transportation System,'' ''Rail Transit Agency,'' ''Roadway,'' ''Safety event,'' ''State Safety Oversight Agency,'' and ''Transit Worker.''

FTA is proposing definitions for this part that are not found in other parts of the FTA safety program. FTA is proposing to define ''roadway worker protection'' to mean the policies, processes, and procedures implemented by an RTA to prevent safety events for transit workers who must access the roadway in the performance of their work. FTA is proposing ''roadway worker'' to mean a transit worker whose duties involve inspection, construction, maintenance, repairs, or providing on-track safety such as flag persons and watchpersons on or near the roadway or right-of-way or with the potential of fouling track. FTA is proposing to define ''fouling a track'' to mean the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving rail transit vehicle or on-track equipment and to further explain that any time an individual or equipment is within the track zone, it is fouling the track.

FTA is proposing to define ''ample time'' to mean the time necessary for a roadway worker to be clear of the track zone or in a place of safety 15 seconds

before a rail transit vehicle moving at the maximum authorized speed on that track could arrive at the location of the roadway worker. As with the other requirements of this proposed regulation, FTA anticipates that some RTAs will exceed FTA's minimum requirements. In this case, FTA is proposing minimum ample time of 15 seconds to provide a baseline of safety that includes clearing the track zone or being in a place of safety. It is FTA's intent with this proposal to ensure that roadway workers receive adequate time to move sufficiently clear of moving vehicles or equipment determined not only by the amount of time needed to move physically off the tracks but also by the amount of time needed in that specific location to be sufficiently clear of moving vehicles.

FTA is proposing to define ''place of safety'' to mean a place an individual or individuals can safely occupy outside the track zone, sufficiently clear of any rail transit vehicle, including any on-track equipment, moving on any track. FTA is proposing to define ''track zone'' to mean an area identified by transit workers where a person or equipment could be struck by the widest equipment that could occupy the track and typically is an area within six feet of the outside rail on both sides of any track.

FTA is also proposing to define ''individual rail transit vehicle detection'' to mean a process by which a lone worker acquires on-track safety by visually detecting approaching rail transit vehicles and leaving the track in ample time. FTA is proposing to define ''on-track safety'' to mean a state of freedom from the danger of being struck by a moving rail transit vehicle or other equipment as provided by operating and safety rules that govern track occupancy by roadway workers, other transit workers, rail transit vehicles, and on-track equipment.

Finally, FTA is proposing to define ''minor tasks'' to mean those tasks performed without the use of tools during the execution of which a roadway worker or other transit worker can visually assess their surroundings at least every five seconds for approaching rail transit vehicles and that can be performed without violating ample time. This definition is part of FTA's proposal to identify appropriate redundant protections for individuals engaged in tasks that require varying levels of attention. FTA is proposing to define ''redundant protection'' to mean at least one additional protection beyond individual rail transit vehicle detection to ensure on-track safety for roadway workers and that redundant protections may be procedural, physical, or both.

FTA is also proposing definitions for ''equivalent protection,'' ''flag person,'' ''foul time protection,'' ''job safety briefing,'' ''lone worker,'' ''maximum authorized speed,'' ''qualified,'' ''rail transit vehicle approach warning,'' ''roadway maintenance machine,'' ''roadway work group,'' ''roadway worker in charge,'' ''RWP manual,'' ''sight distance,'' ''track access guide,'' ''watchperson,'' ''working limits,'' and ''work zone.''

Subpart B—RWP Program and Manual

This subpart proposes minimum requirements for the RWP program, which must be adopted and implemented by each RTA. This subpart also proposes minimum requirements for the RWP manual. Similar to the relationship between the Agency Safety Plan and the SMS required by the PTASP regulation, the RWP manual documents the mechanisms by which the RTA will carry out its RWP program.

671.11 RWP Program

Section 671.11(a) proposes that each RTA must adopt and implement an RWP program designed to improve transit worker safety and that this program must be consistent with Federal and state requirements.

Section 671.11(b) proposes that the RWP program must include an RWP manual, described further in proposed section 671.13, and all of the RWP program elements described in proposed subpart D of this part.

Section 671.11(c) proposes that each RTA must submit its RWP manual and subsequent updates to its SSOA for review and approval, as described in proposed section 671.25.

671.13 RWP Manual

Section 671.13(a) proposes that the RTA establish and maintain a separate, dedicated manual. The creation of this document as a separate, dedicated manual reflects FTA's expectation that this manual will be a critical safety component of an RTA's rail program. This proposal also reflects FTA's belief that separation from other manuals or documents will grant the RTA greater flexibility and responsiveness in updating and amending the RWP manual as needed.

Section 671.13(b) proposes that the RWP manual must include the terminology, abbreviations, and acronyms used by the RTA to describe its RWP program activities and requirements. This proposal reflects FTA's expectation that RTAs will continue use of, or, as necessary, create standard terminology, abbreviations, and acronyms used throughout the agency in relation to RWP.

Section 671.13(c) proposes the list of required elements that must be documented in the RWP manual. The proposed required elements of the manual include all elements of the RWP program required in subpart D of this part and a definition of RTA and transit worker responsibilities as described in subpart C of this part. FTA also proposes that the RWP manual must document the training, qualification, and supervision the RTA requires for transit workers to access the track zone, by labor category or type of work performed. Finally, FTA proposes to require the RWP manual to document the processes and procedures for all transit workers who may access the track zone in the performance of their work, including safety and oversight personnel. In addition, FTA proposes that procedures for SSOA personnel to access the roadway must conform with the SSOA's risk-based inspection program. By requiring an RWP manual to contain certain elements, FTA's intent is to ensure that all critical elements of an RWP program are documented in one manual. FTA expects this to reduce the potential for conflicting RWP program directions and provide a single authoritative source of RWP program information.

Section 671.13(d) proposes that the RWP manual must include or incorporate by reference a track access guide to support on-track safety. FTA believes that a track access guide is a critical element of on-track safety, as discussed in each subsection below. As FTA proposes that this guide must be based on a physical survey of the track geometry and condition of the track system, FTA is proposing flexibility for RTAs to choose to maintain this track access guide separately from their RWP manual to allow frequent updates as the condition of the track system changes.

FTA proposes in section 671.13(d)(1) that the track access guide includes locations with limited, close, or no clearance, including locations that have size or access limitations. Locations with size or access limitations may include but are not limited to, alcoves, recessed spaces, or other designated places or areas of refuge or safety. FTA understands that, although areas of refuge or safety should not be used in a way that limits access, such as being used to store or otherwise house tools, equipment, or materials, RTAs may use some of these areas to store or ''stage'' items used to repair, maintain, or inspect the roadway. FTA proposes including these areas in the physical

survey to ensure roadway workers are aware of any such areas with access limitations.

Section 671.13(d)(2) proposes that the track access guide must also identify locations with increased rail vehicle or on-track equipment braking requirements.

Sections 671.13(d)(2), (3), (4), and (5) propose that the track access guide must identify areas with limited visibility, including locations with reduced rail transit operator visibility due to weather conditions; curves with limited or no visibility; locations with limited or no visibility due to obstructions or topography; and all portals with restricted views. Finally, section 671.13(d)(6) and (7) propose that the track access guide must identify locations with heavy outside noise or other environmental conditions that impact on-track safety and any other locations with access considerations.

In section 671.13(e), FTA proposes to require that the RTA must completely review and update its RWP manual at least every two years. FTA proposes that this includes updates to reflect current conditions, lessons learned in implementing the RWP program as described in the manual, and information provided by the SSOA and FTA. FTA proposes that this review and update occur within two years after the SSOA's initial approval of the RWP manual and not at least every two years thereafter.

FTA proposes a review and update cycle of not less than every two years to ensure that RWP manuals reflect current RTA conditions, policies and procedures, and lessons learned. This cycle is intended to balance the critical nature of this document and effort to review and update the same. As the track access guide must be included or incorporated by reference in the RWP manual, FTA's proposal includes the requirement that this complete review and update will include the track access guide, regardless of whether the guide is maintained as a separate document from the RWP manual. Further, in section 671.13(f), FTA requires RTAs to update both the RWP manual and the track access guide as soon as is practicable when a change in RTA conditions means either document does not reflect current conditions.

Section 671.13(g) proposes that the RTA must distribute the RWP manual to all transit workers who access the roadway and that the RTA distribute the revised manual to all transit workers who access the roadway after each revision. For RTAs that decide to maintain the track access guide separately from the RWP manual, this proposal includes the requirement that those RTAs distribute the track access guide to all transit workers who access the roadway and distribute the revised track access guide to all transit workers after each revision. FTA's intent is to ensure that this safety critical information is disseminated to those workers who access the roadway.

Subpart C—Responsibilities

FTA is proposing RWP responsibilities for three distinct entities: the RTA, transit workers, and the SSOA.

671.21 Rail Transit Agency

Section 671.21 specifies responsibilities for the RTA, including establishing procedures and requirements for equipment and protection.

Section 671.21(a) proposes general requirements for the RTA, the intent of each is described below. Section 671.21(a)(1) proposes to require the RTA to establish procedures to provide ample time and determine appropriate sight distance based on maximum authorized track speeds. FTA's proposed definition for terms used in this part can be found in proposed section 671.5. As previously noted, it is FTA's intent with this proposal to ensure that roadway workers receive adequate time to move sufficiently clear of moving vehicles or equipment determined not only by the amount of time needed to move physically off the tracks but also by the amount of time needed in that specific location to be sufficiently clear of moving vehicles.

FTA's proposals reflect the expectation that RTAs include considerations for roadway work group size when making these determinations, to ensure ample time for all workers to be sufficiently clear of moving vehicles. For example, if the nearest place of safety is not sufficiently large to allow the entire roadway work group to be sufficiently clear of moving vehicles, the RTA must include additional time for members of the workgroup to access another location clear of moving vehicles.

Section 671.21(a)(2) proposes to prohibit the use of individual rail transit vehicle detection as the only form of protection in the track zone. This proposed prohibition reflects FTA's determination that a lone worker may not be able to reliably detect approaching rail transit vehicles or equipment in ample time and, further, that the safety risk associated with the practice of individual rail transit vehicle detection as the only form of protection in the track zone is unacceptable. This proposed prohibition also reflects public input to a September 2021 Request for Information (RFI) on transit worker safety mitigations including potential minimum safety standards for RWP programs. Respondents generally agreed that the use of individual detection of rail transit vehicles as the only method of RWP program did not adequately address all hazards for workers.

Sections 671.21(a)(3) and (4) propose that the RTA must establish procedures to provide job safety briefings to all transit workers who enter a track zone to perform work whenever a rule violation is observed. This is responsive both to FTA's determination that job safety briefings are a critical component of roadway safety and to RFI respondents' assertion that poor quality job safety briefings at different operational and organizational levels may contribute to safety risk for workers on the roadway.

Section 671.21(a)(5) proposes that the RTA must establish procedures to provide transit workers with the right to challenge and refuse in good faith any assignment based on on-track safety concerns and resolve such challenges and refusals promptly and equitably. This is often called a ''good faith safety challenge'' or ''good faith challenge.'' FTA's proposed good faith challenge process described in section 671.37 is modelled on and generally consistent with the existing FRA good faith challenge. FTA understands that many RTAs already implement a version of this procedure and that their version may encompass more than just on-track safety concerns. FTA is not proposing that these RTAs to revise their existing procedure and process, as long as they meet the minimums specified here.

Section 671.21(a)(6) proposes that the RTA must establish procedures to require the reporting of unsafe acts, unsafe conditions, and near-misses on the roadway to the Transit Worker Safety Reporting Program. This proposal creates additional safety reporting requirements for an RTA's Transit Worker Safety Reporting Program established under FTA's existing PTASP regulation (49 CFR 673.23(b)). FTA proposes that an RTA's Transit Worker Safety Reporting program must include mandatory reporting of three major categories of safety concerns on the roadway (unsafe acts, unsafe conditions, and near-misses). This proposed expansion of an RTA's safety reporting program reflects the safety critical nature of information related to RWP.

Section 671.21(a)(7) proposes to require the RTA to ensure that all transit workers who must enter a track zone to

perform work understand, are qualified in, and comply with the RWP program. This proposal reflects industry practice and is intended to ensure that the RWP program is sufficiently broad in application to address all transit workers who may access a track zone.

Section 671.21(b) requires the RTA to establish requirements for on-track safety, including equipment and protection. This proposal reflects industry practice. Section 671.21(b)(1) proposes to require the RTA to establish requirements for equipment transit workers must have in order to access the roadway or track zone. In deference to the specific equipment different job functions may require, FTA specifies that the RTA must establish these requirements by labor category. FTA's intent is to ensure that RTAs establish minimum basic requirements for equipment and to encourage RTAs to consider which positions at their agency may require additional equipment and address those requirements accordingly.

Section 671.21(b)(2) proposes to require RTAs to establish requirements for credentials that transit workers must display while on the roadway or in the track zone. FTA's examples include a badge, wristband, or RWP card, but RTAs may identify alternate forms of credentialing. FTA proposes that RTAs must also establish a requirement for display of credentials such that they are visible when on the roadway or in the track zone. A physical indication of an individual's qualification to access the roadway or the track zone is reflective of industry best practices.

Section 671.21(b)(3) proposes to require the RTA to establish requirements for on-track safety, including protections for emergency response personnel who must access the roadway or the track zone. FTA is proposing this to support the safety of emergency personnel who need to access the roadway or track zone in the performance of their job duties.

Section 671.21(b)(4) proposes to require the RTA to establish protections for multiple roadway work groups within a common area in a track zone. This proposal is responsive to NTSB recommendations. FTA's proposal reflects its expectation that these protections include, at a minimum, information such as, when multiple work groups are present, who is considered the roadway worker in charge, whether one job safety briefing is sufficient or multiple job safety briefings must occur, and how track access is granted and released.

671.23 Transit Worker

Section 671.23 proposes responsibilities for the transit worker. FTA is proposing specific responsibilities for transit workers in part to respond to common industry observations that, when regulations apply only directly to the transit agency, some transit agencies experience difficulty ensuring compliance from the workforce. FTA is also proposing specific responsibilities for transit workers as a reflection of the key role the individual transit worker plays in ensuring on-track safety. This approach is consistent with FRA's requirement for individual roadway workers in 49 CFR 214.313.

Section 671.23(a) proposes to require transit workers to follow the requirements of the RTA's RWP program as it applies to their position and labor category.

Section 671.23(b) proposes to prohibit transit workers from fouling the track until they have received appropriate permissions and redundant protections have been established as specified in the RWP manual.

Section 671.23(c) proposes to require transit workers to understand the protections that they will use for their on-track safety while performing the specific task that requires access to the roadway or track zone. Further, transit workers must acknowledge these protections in writing before they access the roadway or track zone.

Section 671.23(d) proposes to permit a transit worker to refuse to foul the track if the worker makes a good faith determination that the instructions to be applied at a job location do not comply with the RTA's RWP program or are otherwise unsafe. This proposal is the companion to proposed section 671.21(a)(5), which requires RTAs to provide transit workers the right to challenge and refuse in good faith any assignment based on on-track safety concerns.

Similarly, section 671.23(e) proposes to require transit workers to report unsafe acts and conditions and near-misses related to the RWP program as part of the RTA's Transit Worker Safety Reporting Program. This proposal is the companion to proposed section 671.21(a)(6).

671.25 State Safety Oversight Agency

Section 671.25 proposes responsibilities for the SSOA. FTA proposes to require the SSOA to fulfill these responsibilities for every RTA under their jurisdiction. Although not explicitly stated in this text, SSOAs who oversee an RTA that operates in a location that places the RTA under the jurisdiction of two or more SSOAs must work cooperatively with the other SSOA(s) having jurisdiction as required under 49 CFR 674.15.

Section 671.25(a) proposes to require the SSOA to review and approve the RWP manual and any subsequent updates for each RTA within their jurisdiction. This is reflective of the SSOA's primary safety oversight responsibility for such RTAs.

Section 671.25(a)(1) proposes to require that SSOA approve RWP program elements within 90 calendar days of receipt of the program. FTA's proposal reflects its expectation that this amount of time will allow SSOAs to complete full and detailed reviews of all program elements commensurate to the critical role the RWP program plays in ensuring transit worker safety. FTA encourages SSOAs and RTAs to collaborate early and often in the development of the initial RWP program to ensure that (1) the SSOA and RTA can meet their deadlines and (2) the RWP program developed is sufficient to ensure transit worker safety.

Section 671.25(a)(2) proposes to require the SSOA to submit all approved RWP program elements for each RTA in its jurisdiction, and any subsequent updates, to FTA within 30 calendar days of when the SSOA approves those elements. FTA is proposing this to ensure it can validate these safety critical elements.

Section 671.25(b) proposes to require the SSOA to update its Program Standard to explain the role of the SSOA in overseeing the RTA's execution of its RWP program. FTA believes that, as a key safety element of an SSOA's oversight program, the RWP program must be reflected in the SSOA's Program Standard. FTA encourages SSOAs and RTAs to work collaboratively on this update in conjunction with the recommended collaboration on the initial RWP program. FTA is proposing this approach to help SSOAs leverage RTA experience and vice versa, ultimately reducing the need for a prolonged RWP program review and revision process and strengthening both the RWP program and the SSOA's RWP program oversight.

Section 671.25(c)(1) proposes that the SSOA conduct an annual audit of the RTA's compliance with its RWP program. FTA's proposal includes the requirement that the audit include all required RWP program elements and be conducted for each RTA the SSOA oversees. FTA expects SSOAs to conduct these audits independently from any analogous RTA internal audit

or compliance process. The proposal is responsive to NTSB recommendations to require SSOAs to ensure RTAs meet the safety requirements for roadway workers.

Section 671.25(c)(2) proposes to require the SSOA to issue a report with any findings and recommendations arising from the audit. FTA proposes that this report must include, at a minimum, (1) an analysis of the effectiveness of the RWP program; (2) recommendations for improvements, if necessary or appropriate; and (3) corrective action plan(s), if necessary or appropriate. FTA also proposes that the RTA must be given an opportunity to comment on any findings and recommendations. In making this proposal, FTA expects the SSOA to exercise judgment and incorporate changes to the findings or recommendations when presented with errors of fact or other reasonable requests from the RTA. FTA believes these audit reports will be a valuable tool for communicating the results of the SSOA's audit in a form that supports communication of these results to the RTA and, ultimately, resolution of any findings and incorporation of any recommendations as appropriate. Regarding the proposed requirement that SSO audit reports of the RWP program include corrective action plans if necessary or appropriate, FTA proposes that SSOAs and RTAs will follow processes established in part 674 for requiring, developing, approving, and executing corrective action plan(s) related to the RWP program audit.

FTA proposes that the analysis of the effectiveness of the RWP program included in the report must include a review of (1) all RWP-related events over the period covered by the audit; (2) all RWP-related reports made to the Transit Worker Safety Reporting Program over the period covered by the audit; (3) all documentation of instances where a transit worker(s) has challenged and refused in good faith any assignment based on on-track safety concerns and documentation on the resolution; (4) an assessment of the adequacy of the track access guide required in section 671.13(d), including whether the guide reflects current track geometry and conditions; (5) a review of training and qualification records for transit workers who must enter a track zone to perform work; (6) a representative sample of written job safety briefing confirmations as described in sections 671.33(b)(2) and (3); and (7) a review of the RWP compliance monitoring program as described in section 671.43.

Subpart D—Required RWP Program Elements

FTA is proposing the following minimum RWP program element requirements: roadway worker in charge, job safety briefings, requirements for lone workers, good faith safety challenges, risk-based redundant protections, an RWP training and qualification program, and an RWP compliance monitoring program.

671.31 Roadway Worker in Charge

Section 671.31(a) proposes that the RTA must designate one roadway worker in charge for each roadway work group whose duties require fouling a track. FTA proposes that the roadway worker in charge must be qualified under the training and qualification program specified in proposed section 671.41 and is responsible for the on-track safety for all members of the roadway work group. This means that FTA expects the individual assigned as the roadway worker in charge to serve only the function of maintaining on-track safety for all members of their roadway work group and to perform no other unrelated job function. RTAs may designate a general roadway worker in charge or may designate a roadway worker in charge specifically for a particular work situation.

Section 671.31(b) proposes that the RTA must ensure the roadway worker in charge provides a job safety briefing to all roadway workers before any member of the roadway work group fouls a track. Additionally, FTA proposes that the roadway worker in charge must provide an updated job safety briefing before the on-track safety procedures change during the work period and immediately after any observed violation of on-track safety procedures before track zone work continues.

FTA understands that emergencies may occur such that roadway workers in charge may not be able to provide updated job safety briefings of changes to on-track safety. Therefore, FTA proposes section 671.31(b)(2) to specify that, in the event of an emergency, any roadway worker who cannot receive the updated job safety briefing in advance of a change to on-track safety procedures, must be removed from the roadway and must not return until on-track safety is re-established, and they have been given an updated job safety briefing.

FTA's proposals regarding job safety briefings largely reflect industry practice and propose explicitly requiring updated job safety briefings to address common situations where the on-track safety procedures change during a work period and to immediately respond to observed violations of on-track safety procedures.

671.33 Job Safety Briefing

Section 671.33 proposes specific requirements for job safety briefings. This proposal is responsive to NTSB safety recommendations about establishing requirements for job safety briefings and is consistent with FRA requirements.

Section 671.33(a) reiterates the proposed requirements that the RTA must ensure the roadway worker in charge provides any roadway worker who must foul a track with a job safety briefing prior to fouling the track, every time the roadway worker fouls the track.

Section 671.33(b) proposes the required minimum elements, as appropriate, of the job safety briefing that the roadway worker in charge must provide. FTA proposes the ''as appropriate'' language because not all of the elements may be relevant to each rail transit system. This proposal includes (1) a discussion of the nature of the work to be performed and the characteristics of the work, and includes work plans for instances where multiple roadway worker groups are working within a single area. FTA expects this to also include any relevant information for multiple roadway worker groups working in adjacent areas; (2) a discussion of the established working limits; (3) identification of any hazards involved in performing the work; (4) information on how track safety is being provided for each track identified to be fouled and identification and location of key personnel, such as a watchperson and the roadway worker in charge; (5) instructions for each on-track safety procedure to be followed, including appropriate flags and flag placement, placement; (6) roles and responsibilities for communication for all transit workers involved in the work, responsive to NTSB recommendations; (7) safety information about any adjacent track and identification of the roadway maintenance machines or on-track equipment that may foul adjacent tracks; (8) information on how to access the roadway worker in charge and instructions for alternative procedures in the event that the roadway worker in charge becomes inaccessible to members of the roadway work group; (9) personal protective equipment required for the work to be performed; (10) designated place(s) of safety; and (11) the means for determining how ample time will be provided.

FTA's intent is that the proposed discussion of the nature and characteristics of the work includes any relevant information for multiple

roadway worker groups working in adjacent areas. The proposals that the job safety briefing include instructions for each on-track safety procedure to be followed and the role and responsibilities for communication for all transit workers involved in the work are responsive to NTSB recommendations.

Section 671.33(b)(10) proposes that the job safety briefing must identify designated place(s) of safety. FTA intends that the identified designated place(s) of safety will be sufficient for the number of transit workers in the roadway work group. This proposal reflects FTA's understanding that such designated places of safety must be accessible and clear of debris, tools, equipment, or any other material that hinders the ability to access and occupy the space. While not part of the proposal, FTA's expectation is that, where multiple work groups occupy overlapping or adjacent work locations, the associated roadway workers in charge coordinate to ensure their job safety briefings identify designated place(s) of safety sufficient for the combined number of transit workers in the roadway work group.

Section 671.33(c) proposes that, to complete a job safety briefing, the roadway worker in charge must confirm that each roadway worker understands the on-track safety procedures and instructions, each roadway worker acknowledges the briefing and accepts the required personal protective equipment in writing, and the roadway worker in charge verifies in writing each roadway worker's understanding and written acknowledgment of the briefing.

Section 671.33(d) proposes that, if there is any change in the scope of work or roadway work group after the initial job safety briefing, or if a violation of on-track safety is observed, a follow-up job safety briefing must be conducted. This follow-up safety briefing must be completed before any member of the work group reenters the roadway.

671.35 Lone Worker

FTA proposes section 671.35 to address common industry and NTSB concerns and recommendations about the practice of permitting a single person to foul the track. Specifically, FTA proposes to allow RTAs to authorize lone workers to perform limited duties that require fouling a track only under the following circumstances: (1) the lone worker must be qualified as both as a roadway worker in charge and as a lone worker following the RTA's RWP training and qualification program; (2) the lone worker may perform only routine inspection or minor tasks and move from one location to another, may only access locations defined in the track access guide as appropriate for lone workers, and may not use power tools; and (3) the lone worker may not use individual rail transit vehicle detection as the only form of on-track safety. The proposal that lone workers may not use individual rail transit vehicle detection is a form of on-track safety is responsive to NTSB recommendations on lone workers. These proposed restrictions reflect the exponential increase in safety risk presented by workers fouling the track as individuals rather than as part of a roadway work group while respecting that certain job functions may be performed safely under these restrictions as a lone worker.

Section 671.35(b) proposes that each lone worker must communicate with a supervisor or other designated transit worker to receive an on-track safety briefing consistent with proposed section 671.33(b) prior to fouling the track. FTA proposes that this briefing must include a discussion of the planned work activities and the procedures they will use to establish on-track safety. FTA also proposes that the lone worker must acknowledge and document the job safety briefing in writing.

671.37 Good Faith Safety Challenge

Section 671.37(a) proposes that the RTA must document its procedures that it provides to roadway workers the right to challenge and refuse in good faith any RWP assignment they believe is unsafe or would violate the RTA's RWP program. FTA proposes in section 671.37(b) that this written procedure must include methods or processes to ensure prompt and equitable resolution of any challenges and refusals made. Section 671.37(c) proposes that the written procedure must require the roadway worker to provide a description of the safety concern regarding on-track safety and that the roadway worker issuing a good faith safety challenge must remain clear of the roadway or track zone until the challenge and refusal is resolved. This process reflects common industry practice and provides a mechanism for transit workers, who often are the most familiar with the particular needs and hazards related to their specific job tasks, to appropriately address unsafe situations.

671.39 Risk-Based Redundant Protections

Section 671.39(a) proposes requirements for RTAs to identify and provide redundant protections for each category of work roadway workers perform on the roadway or track. This section also proposes to require the establishment of redundant protections to ensure on-track safety for multiple roadway work groups within a common area. This proposal is responsive to NTSB recommendations for FTA to require the use of redundant protections.

Section 671.39(b) proposes that the RTA must use the appropriate Safety Risk Management of its SMS established in part 673 to assess safety risk and establish mitigations in the form of redundant protections. This section proposes that the RTA must use the methods and processes established under part 673 to establish redundant protections for each category of work performed by roadway workers on the rail transit system, including workers, to the extent that lone workers are permitted under the agency's RWP program. This proposal reflects FTA's adoption of the principles of SMS as the mechanism for ensuring transit safety.

In section 671.39(b)(1), FTA proposes that this safety risk assessment must be consistent with the RTA's Agency Safety Plan and the SSOA's Program Standard. In section 671.39(b)(2), FTA is proposing that RTAs may supplement the safety risk assessment with engineering assessments, inputs from the Safety Assurance process established in part 673, the results of safety event investigations, and other safety risk management strategies and approaches.

Section 671.39(b)(3) proposes that the RTA must review and update the safety risk assessment at least every two years. This proposal is intended to ensure that the safety risk assessment reflects current conditions, lessons learned from safety events, actions the RTA has taken to address reports of unsafe acts and conditions and near-misses, and the results of the agency's monitoring of redundant protection effectiveness.

Section 671.39(b)(4) proposes that the SSOA may identify and require the RTA to implement alternate redundant protections based on the RTA's unique operating characteristics and capabilities. These redundant protections may supplant or be implemented alongside the RTA's identified redundant protections.

Section 671.39(c) proposes that the RTA must identify redundant protections for roadway workers performing different categories of work on the roadway and within track zones. This flexibility is intended to reflect the wide range of activities conducted on the roadway and to provide the opportunity for RTAs to ''right size''

protections based on the safety risk associated with different categories of work. This proposal would require RTAs to establish and layer redundant protections commensurate with the work being performed. FTA proposes that RTAs, at a minimum, identify redundant protections for the following categories of work, as appropriate: (1) roadway workers moving from one track zone to another; (2) roadway workers performing minor tasks; (3) roadway workers conducting visual inspections; (4) roadway workers using hand tools, machines, or equipment to test track system components or conduct non-visual inspections; (5) roadway workers using hand tools, machines, or equipment in performing maintenance, construction, or repairs; and (6) lone workers, to the extent that lone workers are permitted by the RTA's RWP program, accessing the roadway or track zone or performing visual inspections or minor tasks.

Section 671.39(d)(1) proposes that redundant protections may be procedural or physical. FTA has proposed definitions for each kind of protection as it is likely that RTAs will use a mix of procedural and physical redundant protections to ensure on-track safety. Allowing both physical and procedural redundant protections is responsive to RFI respondents, the majority of whom recommended that FTA allow both physical and redundant protections for workers on the roadway.

Section 671.39(d)(2) proposes example redundant protections. FTA is not proposing an explicit set of redundant protections; rather, FTA proposes that RTAs and SSOAs may use any of the redundant protections listed in this paragraph or identify, using the agency's Safety Risk Management process, redundant protections suitable to the specific circumstance under which they will be used.

Section 671.39(d)(3) proposes that redundant protections for lone workers must include, at a minimum, foul time or an equivalent protection approved by the SSOA.

671.41 RWP Training and Qualifications

Section 671.41(a) proposes the general requirement for an RTA to adopt an RWP training program. This proposal is responsive to NTSB recommendations. Section 671.41(a)(1) proposes that the training program must address all transit workers responsible for on-track safety by position. This proposal includes, but is not limited to, roadway workers, operation control center personnel, rail transit vehicle operators, operators of on-track equipment and roadway maintenance machines, and any other transit workers who play a role in providing on-track safety or fouling a track for the performance of work as transit workers who must be addressed by the RWP training program.

Section 671.41(a)(2) proposes that a transit worker must complete the RWP training program for the relevant position before the RTA may assign that transit worker to perform the duties of a roadway worker; to oversee or supervise access to the track zone from the operations control center; or to operate vehicles, on-track equipment, and roadway maintenance machines on the rail transit system.

Section 671.41(a)(3) proposes that the RWP training program must address RWP hazard recognition and mitigation. This proposal is responsive to an NTSB recommendation to require initial and recurring training for roadway workers in hazard recognition and mitigation. This section also specifies that the training program must address lessons learned through the results of compliance testing, near-miss reports, reports of unsafe acts or conditions, and feedback received on the training program.

Section 671.41(a)(4) proposes that the RWP training program must include both initial and refresher training by position and that refresher training must occur every two years at a minimum.

Section 671.41(a)(5) proposes that the RTA must review and update its RWP program not less than every two years. FTA proposes that this includes incorporating lessons learned in implementing the RWP program and information provided by the SSOA and FTA. FTA also proposes that the review and update process must include an opportunity for roadway worker involvement, to ensure potentially valuable safety information from workers executing tasks on the roadway can be collected and incorporated into the safety training program.

Section 671.41(b) proposes the required elements of the RWP training program. FTA is proposing these elements based on industry best practices and best practices for adult learners.

Section 671.41(b)(1) proposes that the RWP training program must include interactive training that provides the opportunity for workers to ask the RWP trainer questions and for workers and trainers to raise and discuss RWP issues. FTA proposes that the initial training must include experience in a representative field setting such that the initial training may not be classroom-only. FTA also proposes that both the initial and refresher training must include worker demonstrations and trainer assessments of the worker's ability to comply with RWP instructions.

Section 671.41(c) proposes minimum contents for the RWP training program. FTA proposes that the RWP training program include at a minimum: (1) how to interpret and use the RTA's RWP manual; (2) how to use the RTA's good faith challenge process; (3) how to make reports on unsafe acts, unsafe conditions, and near misses through the RTA's Transit Worker Safety Reporting Program and the mandatory duty to make such reports; (4) track zone recognition and an understanding of the space around the tracks within which on-track safety is required, including use of the track access guide; (5) the functions and responsibilities of all transit workers involved in on-track safety, by position; (6) proper compliance with on-track safety instructions; (7) signals and directions given by watchpersons, and the proper procedures to implement upon receiving a rail transit vehicle approach warning from a watchperson; (8) the hazards associated with working on or near rail transit tracks, including traction power, if applicable; (9) rules and procedures for redundant protections identified under section 671.37 and how they are applied to RWP; and (10) how to safely cross rail transit tracks in yards and on the mainline. These minimum proposed elements reflect industry best practice and provide a baseline for safety on the roadway.

Section 671.41(d) proposes specialized minimum training and qualifications for transit workers with additional responsibilities for on-track safety. FTA is proposing additional training for transit workers serving the function of watchpersons, flag persons, lone workers, roadway workers in charge, and any other transit workers with responsibilities for establishing, supervising, and monitoring on track safety. FTA proposes that this training must cover the content and application of the additional RWP program requirements carried out by the relevant position(s). FTA also proposes that this additional training must also address the relevant physical characteristics of the RTA's system where on-track safety may be established.

Similar to the general RWP training program, FTA proposes that this specialized training must include demonstration and assessment of the transit worker's ability to perform these additional responsibilities. FTA proposes that refresher training on these additional responsibilities must occur at

least every two years. This proposal reflects the critical safety role these transit workers have in establishing, supervising, and monitoring on track safety.

Section 671.41(e) proposes that the RTA must ensure that those transit workers providing RWP training are qualified and have active RWP certification at the RTA. This proposal is intended to ensure that RTAs are providing effective RWP training. Section 671.41(e) further proposes that, at a minimum, the RTA must consider: (1) a trainer's experience and knowledge of effective training techniques in the chosen learning environment; (2) a trainer's experience with the RTA RWP program; (3) a trainer's knowledge of the RTA RWP rules, operations, and operating environment, including applicable operating rules; and (4) a trainer's knowledge of the training requirements specified in this part. FTA's intent with this proposal is to ensure that trainers providing RWP program training have the capacity to deliver effective training in the learning environment used at the agency; are experienced with the specifics of the RTA's individual RWP program, the RTA's rules, operations, and operating environment; and are knowledgeable about FTA's requirements for RWP program training.

671.43 RWP Compliance Monitoring Program

Section 671.43 proposes that the RTA must develop and implement a program to monitor its own compliance with the requirements specified in its RWP program. This monitoring program is consistent with Safety Assurance principles and is intended to ensure consistent and effective RWP program implementation. FTA proposes that this program must include, at a minimum, inspections, observations, and audits consistent with the safety performance monitoring and measurement practices established in the RTA's Agency Safety Plan and the SSOA's Program Standard.

Section 671.43(b)(1) further proposes that the RTA must provide monthly reports to the SSOA documenting the RTA's compliance with and sufficiency of the RWP program and section 671.43(b)(2) specifies that the RTA must provide an annual briefing to the Accountable Executive and the Board of Directors, or equivalent entity, regarding the performance of the RWP program and any identified deficiencies requiring corrective action.

Subpart E—Recordkeeping

671.51 Recordkeeping

FTA proposes recordkeeping requirements related to the RWP program in keeping with the recordkeeping requirements established in part 673, which requires transit agencies to maintain document related to SMS implementation and the results of SMS processes and activities. As discussed above, an RWP program is a key element of Safety Risk Management and Safety Assurance in an RTA's SMS.

Section 671.51(a) proposes that the RTA must maintain the documents that set forth its RWP program, documents related to the implementation of its RWP program, and documentation of the results from the procedures, processes, assessments, training, and activities specified in this part for the RWP program.

Section 671.51(b) proposes that the RTA must maintain records of its compliance with this requirement, including transit worker RWP training and refresher training records, for a minimum of three years after the individual record is created.

Finally, Section 671.51(c) specifies that the RTA must make these documents available upon request by FTA or other Federal entity, or an SSOA having jurisdiction.

IV. Regulatory Analyses and Notices

Executive Order 12866 (''Regulatory Planning and Review''), as supplemented by Executive Order 13563 (''Improving Regulation and Regulatory Review'') and Executive Order 14094 (''Modernizing Regulatory Review''), directs Federal agencies to assess the benefits and costs of regulations, to select regulatory approaches that maximize net benefits when possible, and to consider economic, environmental, and distributional effects. It also directs the Office of Management and Budget (OMB) to review significant regulatory actions, including regulations with annual economic effects of $200 million or more. OMB has determined that the proposed rule is not significant within the meaning of Executive Order 12866 and has not reviewed it under that order.

Overview and Need for Regulation

FTA has determined that unsafe practices and conditions place rail transit workers at risk of being killed or seriously injured while performing work on the roadway. According to data collected by FTA, roadway worker accidents have caused more transit worker fatalities than any other type of safety event. Since 1994, 52 rail transit workers have been killed and over 200 workers have experienced major injuries from roadway safety events, primarily from collisions with rail transit vehicles, falls, and electrocution. From January 1, 2008, to October 31, 2022, 22 workers have been killed and 120 workers seriously injured in roadway accidents. Currently, there are no Federal regulations or standards governing rail transit worker RWP, despite recommendations from NTSB and TRACS.

The proposed rule would establish RWP program standards for rail transit agencies in all states. The rule would establish minimum baseline standards and require risk-based redundant protections, defined as protections outside of the employee's individual ability to detect a train and move to a place of safety, such as shunts or derailers, for rail transit roadway workers occupying the rail roadway during hours of operations. The rule would require transit agencies to do the following:

1. Set minimum standards for RWP program elements, including an RWP manual and track access guide.
2. Meet requirements for on-track safety and supervision, job safety briefings, good faith safety challenges, and reporting unsafe acts and conditions and near-misses.
3. Develop and implement risk-based redundant protections for workers.
4. Establish RWP training, qualification, and compliance monitoring activities.

The proposed rule would apply to RTAs in the SSO program, SSOAs, and rail transit workers who access the roadway to perform work. SSOAs would oversee and enforce FTA's RWP program requirements.

Baseline and Analytical Approach

FTA considered three regulatory options while developing the proposed rule. The key distinction between the three options is the use of redundant protections.

Option 1: FTA would require RTAs to perform a risk analysis to determine what types of redundant protections must be used in addition to the baseline RWP program.

Option 2: FTA would establish requirements for an RWP program but would not mandate the use of redundant protections.

Option 3: FTA would mandate the use of standard physical redundant protections to protect workers when accessing the roadway in additions to the baseline RWP program.

To assess the effects of the three regulatory options, FTA analyzed roadway worker injuries and fatalities outside California from January 1, 2008, to September 19, 2020 (12.7 years). The analysis excludes California because the state established RWP safety standards in 2016.[2] Agencies reported 97 injuries and 20 fatalities, for an annual average of 7.6 injuries and 1.6 fatalities. FTA used the annual averages as a baseline rate for fatalities and injuries in the absence of the proposed rule.

To estimate benefits and costs of the proposed rule, FTA used a ten-year analysis period from 2023–2032. All dollar amounts listed are in 2020 dollars. To estimate labor costs associated with meeting requirements, FTA used occupational wage data from the Bureau of Labor Statistics as of May 2020 for the ''Urban Transit Systems'' industry (North American Industry Classification System code 485100).[3] FTA used median hourly wages as a basis for the estimated labor costs, multiplied by 1.62 to account for employer benefits.[4]

Benefits

Transit subject-matter experts working with FTA reviewed injuries and fatalities reported in the NTD to determine if the regulatory options would have prevented them. FTA then calculated the average annual number of preventable injuries and fatalities to estimate the benefits of each regulatory option. One source of uncertainty for the analysis is that FTA does not have information on the RWP programs or protections that agencies may have adopted after the accidents. As a result, the analysis may slightly overestimate the benefits (and the associated costs) of the regulatory options.

Table 1 compares the average number of preventable injuries and fatalities for each regulatory option. Option 1 would result in an average annual reduction of 2.37 injuries and 1.18 fatalities. Option 2 results in an average annual reduction of 1.34 injuries and 0.87 fatalities. Option 3 results in an average annual reduction of 3.87 injuries and 1.42 fatalities.

TABLE 1—AVERAGE ANNUAL PREVENTABLE INJURIES AND FATALITIES, 2008 TO 2020

Item	Option 1	Option 2	Option 3
Preventable Injuries	2.37	1.34	3.87
Preventable Fatalities	1.18	0.87	1.42

To determine the monetized values for prevented fatalities and injuries, FTA used DOT's value of $11.6 million for a fatality and the KABCO Scale value of $210,000 for an injury with ''Severity Unknown.'' [5]

Over the 10-year analysis period, the undiscounted benefits for Option 1 are $142.3 million, and the annualized benefits are $13.7 million at a 2 percent discount rate, discounted to 2023 (Table 2). For Option 2, the undiscounted benefits are $103.5 million, with annualized benefits of $10 million. For Option 3, the undiscounted benefits are $173 million, with annualized benefits of $16.6 million.

TABLE 2—BENEFITS OF THE PROPOSED RULE

[2023–2032]

Benefits (2023 to 2032)	Option 1	Option 2	Option 3
Undiscounted	$142,311,760	$103,532,044	$172,931,886
Annualized (2% Discount Rate)	13,678,562	9,951,177	16,621,673

Costs

Agencies are expected to incur start-up and ongoing costs to implement RWP requirements. While some costs vary by regulatory option, many of the costs are fixed. Table 3 summarizes costs of the provisions over the 10-year analysis period. The largest fixed cost is for the *Roadway Worker Protection Training* program, which has estimated costs of $46 million. The largest difference in costs among the regulatory options stems from the *Minimum Controls and Limitations* (redundant worker protections) requirement, which has costs ranging from $0 for Option 2 to $118 million for Option 3.

TABLE 3—TEN-YEAR COSTS OF THE PROPOSED RULE

[2023–2032]

Requirement	Option 1	Option 2	Option 3
RWP Program	$911,728	$911,728	$911,728
RWP Manual	51,656	51,656	51,656
Rail System Responsibilities	152,466	152,466	152,466

[2] Public Utilities Commission of the State of California (2016). ''General Order No. 175–A: Rules and Regulations Governing Roadway Worker Protection Provided by Rail Transit Agencies and Rail Fixed Guideway Systems.'' *https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M159/K905/159905345.pdf.*

[3] Bureau of Labor Statistics (2021). ''May 2020 National Occupational Employment and Wage Estimates: United States: NAICS 485000—Transit and Ground Passenger Transportation.'' *https://www.bls.gov/oes/2020/may/naics3_485000.htm.*

[4] Multiplier derived using Bureau of Labor Statistics data on employer costs for employee compensation in December 2022 (*https://www.bls.gov/news.release/ecec.htm*). Employer costs for state and local government workers averaged $57.60 an hour, with $35.69 for wages and $21.95 for benefit costs. To estimate full costs from wages, one would use a multiplier of $57.60/$21.95, or 1.62.

[5] U.S. Department of Transportation (2022). ''Departmental Guidance on Valuation of a Statistical Life in Economic Analysis.'' *https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis.*

TABLE 3—TEN-YEAR COSTS OF THE PROPOSED RULE—Continued

[2023–2032]

Requirement	Option 1	Option 2	Option 3
Employee Responsibilities	5,165,600	5,165,600	5,165,600
Job Safety Briefing	2,418	2,418	2,418
Minimum Controls and Limitations	59,138,560	0	118,277,120
Roadway Worker Protection Training	46,041,229	46,065,170	46,065,170
Risk Assessment for Redundant Protections	118,910	0	118,91
Employee Injury and Illness Program & Records	356,730	356,730	356,730
Near Miss Reporting Program & Records	2,616,020	2,616,020	2,616,020
Recordkeeping	258,280	258,280	258,280
Total Costs	114,813,598	55,508,069	176,976,098

RWP Programs

RTAs would incur costs to develop and implement programs for ROW workers if they do not already have formal standalone programs. FTA estimates that 33 of the 55 RTAs outside California (60 percent) already have formal standalone programs, based on industry responses to FTA Safety Advisory 14–1,[6] and that 26 of the 33 RTAs already monitor the effectiveness of the programs.

For the remaining 22 RTAs (40 percent), FTA estimates that an RTA would need an average of 96 labor hours to develop and implement a formal standalone RWP program, plus 40 hours per year to monitor the program's effectiveness. The 40-hour estimate also applies to the 5 RTAs that already have programs but do not monitor their effectiveness. FTA assumes that the work is performed by a *First-Line Supervisor of Mechanics, Installers, and Repairers* with a median wage rate of $58.70 per hour. The program requirements have estimated one-time costs of $232,452 and annual recurring costs of $67,928 (Table 4).

TABLE 4—RWP PROGRAM COSTS

[Options 1–3]

Requirement	One-time costs	Recurring costs
RWP Program Establishment	$51,656	
RWP Program Effectiveness Monitoring	0	$67,928
SSOA Review	129,140	
RWP Program Response to SSOA Comments	51,656	
Total	232,452	67,928

RWP Training Programs

The proposed rule would require agencies to establish initial and refresher training for roadway workers. FTA subject matter experts estimated resources needed for transit agencies to develop and implement the programs. FTA assumes that initial training and refresher trainings for roadway workers require 4.5 hours to complete per employee, training for all RTA employees requires 1 hour, and training for lone workers requires 8 hours. The resources needed for initial and refresher training are the same for each regulatory option.

FTA estimates that 90 percent of RTAs have already developed initial training programs for roadway workers and 79 percent of RTAs have already developed refresher training for roadway workers. FTA estimates that an RTA would need 60 hours to develop an initial or refresher training if it has not already. FTA assumes that no agencies have developed training for all employees or training for lone workers.

The training has estimated one-time costs of $560,000 and annual recurring costs of $4.5 million for all three regulatory options. Table 5 shows estimated costs by regulatory option for RWP training in the first year and subsequent years; Table 6 shows estimated costs by occupation.

TABLE 5—RWP TRAINING PROGRAM COSTS

[Options 1–3]

Requirement	Workers	Total required hours	Total costs, initial	Total costs, annual
Development of Initial Training		60 hours per RTA	$11,623	
Development of Recurring Training		60 hours per RTA	24,407	
Initial Training for Roadway Workers	31,974	143,882	524,915	
Refresher Training for Roadway Workers	31,974	143,882		$1,102,322
Training for All Employees	50,132	50,132		1,881,946
Training for Lone Workers	5,500	44,000		1,563,760

[6] Federal Transit Administration (December 2013). ''FTA Safety Advisory 14–1: Right-of Way Worker Protection.'' *https://www.transit.dot.gov/oversight-policy-areas/safety-advisory-14-1-right-way-worker-protection-december-2013.*

TABLE 5—RWP TRAINING PROGRAM COSTS—Continued

[Options 1–3]

Requirement	Workers	Total required hours	Total costs, initial	Total costs, annual
Total			560,945	4,548,028

TABLE 6—RWP TRAINING PROGRAM COSTS BY OCCUPATION

[Options 1–3]

Occupation	Fully loaded wage rate	Workers	Hours per worker	Total required hours, initial	Total required hours, annual	Total costs, initial	Total costs, annual
49–9071 Maintenance and Repair Workers, General	$35.54	13,824	4.5	62,209	62,209	$221,090	$928,577
53–4041 Subway and Streetcar Operators	37.20	18,150	4.5	81,674	81,674	303,825	1,276,067
00–0000 All Occupations	37.54	50,132	1		50,132		1,881,946
49–9071 Maintenance and Repair Workers, General (Lone Workers)	35.54	5,500	8		44,000		1,563,760
Total		87,606		143,882	238,014	524,915	4,548,028

Redundant Worker Protections

The major cost driver for redundant worker protections is the number of full-time equivalent (FTE) employees needed to establish worker controls and access limitations. Option 1 requires RTAs to do a risk assessment to determine the types of redundant protections to use, Option 2 does not require redundant protections, and Option 3 requires all RTAs to use standard physical redundant protections.

Table 7 lists annual estimated costs for the additional FTEs needed under each regulatory option. The number of FTEs needed is derived from information in California's Public Utilities Commission General Order Number 175–A. FTA assumes a labor rate of $35.54 per hour for *Maintenance and Repair Workers, General* for this requirement. For Option 1, FTA assumes 80 additional FTEs (at 2080 hours per FTE) for an annual total of 166,400 hours and $5,913,856 in recurring costs. Option 3 assumes 160 additional FTEs for a total of 332,800 required hours, annually and $11,827,712 in recurring costs.

TABLE 7—REDUNDANT WORKER PROTECTIONS, ESTIMATED COSTS

[2023–2032]

Regulatory option	FTEs	Required hours	Labor rate	Annual costs
Option 1	80	2,080	$35.54	$5,913,856
Option 2	0	0	0	0
Option 3	160	2,080	35.54	11,827,712

Other Costs

Additional cost elements for each regulatory option include:

- Developing an RWP manual
- Establishing rail fixed guideway public transportation system responsibilities
- Establishing employee responsibilities
- Conducting job safety briefings
- Conducting risk assessment for redundant protections
- Establishing employee injury and illness program and maintaining records
- Establishing a near miss reporting program and maintaining records
- Other recordkeeping

FTA assumes that each option has the same staffing requirements and costs for the additional cost elements, unless stated otherwise. A breakdown of the costs is listed in Table 8.

TABLE 8—ADDITIONAL RWP REQUIREMENTS, OPTIONS 1–3

Requirement	One-time costs	Recurring costs
RWP Manual	$51,656	
Rail System Responsibilities	95,564	$5,690
Employee Responsibilities		516,560
Job Safety Briefing		242
Risk Assessment for Redundant Protections (Options 1 and 3)	118,910	
Employee Injury and Illness Program and Records		35,673
Near Miss Reporting Program and Records	951,280	166,474
Recordkeeping		25,828
Total	1,217,410	750,467

Summary of Costs

Table 9 summarizes undiscounted costs for the three regulatory options. Option 1 has one-time costs of $2.0 million and annual costs of $11.3 million. Option 2 has one-time costs of $1.9 million and $5.4 million. Finally, Option 3 has one-time costs of $2.0 million and $17.2 million in annual costs.

TABLE 9—SUMMARY OF COSTS BY REGULATORY OPTION, 2023–2032

Regulatory option	One-time costs	Annual costs	Total costs (undiscounted)
Option 1	$2,010,807	$11,280,279	$114,813,598
Option 2	1,915,917	5,366,415	55,580,068
Option 3	2,034,827	17,194,127	173,976,098

Table 10 shows estimated discounted costs for each regulatory option over the 10-year analysis period at a 2 percent discount rate, discounted to 2023. Option 1 has annualized costs of $11.1 million, Option 2 has annualized costs of $5.4 million, and Option 3 has annualized costs of $16.7 million.

TABLE 10—DISCOUNTED COSTS (2023–2032), 2% DISCOUNT RATE

Requirement	Option 1	Option 2	Option 3
RWP Program	$805,517	$805,517	$805,517
RWP Manual	48,677	48,677	48,677
Rail System Responsibilities	139,180	139,180	139,180
Employee Responsibilities	4,459,866	4,459,866	4,459,866
Job Safety Briefing	2,088	2,088	2,088
Minimum Controls and Limitations	51,058,933	0	102,117,867
Roadway Worker Protection Training	39,795,269	39,795,269	39,795,269
Risk Assessment for Redundant Protections	112,051	0	112,051
Employee Injury and Illness Program & Records	307,923	307,923	307,923
Near Miss Reporting Program & Records	2,333,712	2,333,712	2,333,712
Recordkeeping	222,993	222,993	222,993
Total Costs	99,286,280	48,173,861	150,367,799
Annualized Costs	11,053,197	5,359,021	16,739,923

Net Benefits

Table 11 shows the estimated net benefits for each regulatory option at a 2 percent discount rate, discounted to 2023. Option 1 has annualized net benefits of $2.6 million, Option 2 has annualized net benefits of $4.6 million, and Option 3 has annualized net benefits of −$120,000.

Option 2, which would prevent an annual average of 1.34 injuries and 0.87 fatalities, yielded the highest net benefit. Option 1 prevents more fatalities and injuries (2.37 injuries and 1.18 fatalities) while also yielding a positive net benefit. While Option 3 would prevent the most fatalities and injuries, it does not have a positive net benefit due to the costs of the required physical redundant protections.

TABLE 11—NET BENEFITS

Regulatory option	Annualized benefits	Annualized costs	Annualized net benefits (2% discount rate)
Option 1	$13,678,562	$11,053,197	$2,625,365
Option 2	9,951,177	5,359,021	4,592,156
Option 3	16,621,673	16,733,623	−111,950

Sensitivity Analysis

The net benefits for each regulatory option primarily depend on the estimated number of fatalities they would prevent. FTA conducted a sensitivity analysis to understand how changes to the estimates would affect the relative net benefits of the three options.

If the redundant worker protections that agencies would adopt in Option 1 would prevent more fatalities and injuries than estimated, then the net benefits of Option 1 would increase relative to Option 2. The protections would need to prevent an additional 0.18 fatalities (for an annual average of 1.36 fatalities) for Option 1 to have the same net benefits as Option 2 at a 2 percent discount rate. Similarly, for Option 3, the redundant worker protections would need to prevent an additional .42 fatalities (for an annual average of 1.84 fatalities) for Option 3 to have the same net benefits as Option 2 at a 2 percent discount rate.

Regulatory Alternatives

FTA selected the requirements of Option 1 for the proposed rule because it would prevent more roadway worker safety events than Option 2 while maintaining net positive benefits. Many current rail transit RWP programs have provisions that allow roadway workers onto the track to perform work without protections beyond their own ability to detect oncoming trains and clear the tracks before their arrival. FTA's internal safety risk management process

identified the lack of redundant protections as the most significant contributor to rail transit roadway worker safety events. Similarly, NTSB, TRACS, and many commenters responding to FTA's RFI on Rail Transit Worker Safety also support the use of redundant protections.[7] Because no two RTAs are the same, Option 1 would provide rail transit agencies the flexibility to determine the types of procedural and physical redundant protections to incorporate. Option 1 would also provide a clear role for SSOAs to approve RWP programs and to ensure overall program effectiveness.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to assess the impact of a regulation on small entities unless the agency determines that the regulation is not expected to have a significant economic impact on a substantial number of small entities.

The proposed rule would create new RWP program requirements for RTAs and SSOAs. Under the Act, public-sector organizations and local governments qualify as small entities if they serve a population of less than 50,000. RTAs do not qualify as small entities because they all operate in urbanized areas with populations of more than 50,000, and SSOAs do not qualify because they are state agencies. FTA has therefore determined that the proposed rule would not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FTA has determined that this rule would not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule does not include a Federal mandate that may result in expenditures of $100 million or more in any one year, adjusted for inflation, by State, local, and tribal governments in the aggregate or by the private sector. The threshold in 2023 dollars is $183 million after adjusting for inflation using the gross domestic product implicit price deflator. Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The Federal Transit Act permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (PRA), and the White House Office of Management and Budget's (OMB) implementing regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for a new information collection that is associated with a notice of proposed rulemaking. FTA is seeking approval from OMB for the information collection request abstracted below.

- *Type of Collection:* Operators of rail public transportation systems.
- *Respondents to Collection:* RTAs in the SSO program, SSOAs, and rail transit workers who access the roadway to perform work.
- *Type of Review:* OMB Clearance. New information collection request.
- *Summary of the Collection:* The collection of information includes: (1) Each RTA would adopt and implement an RWP program to improve transit worker safety that is consistent with Federal and State safety requirements and approved by the SSOA; they would be required to review and update their program manual not less than every two years; (2) Require implementation of comprehensive job safety briefings and reporting of near-misses; (3) Documenting formal training and qualification programs for all workers who access the roadway; (4) Program compliance auditing and monitoring; (5) Periodic request for information; and (6) Ensuring compliance of SSOAs responsibility to approve, oversee and enforce RWP requirements (7) submission of RWP programs and updates to FTA.
- *Frequency:* Bi-Annual, Periodic.

FTA seeks public comment to evaluate whether the proposed collection of information is necessary for the proper performance of FTA's functions, including whether the information will have practical utility; whether the estimation of the burden of the proposed information collection is accurate, including the validity of the methodologies and assumptions used; ways in which the quality, utility, and clarity of the information can be enhanced; and whether the burden can be minimized, including through the use of automated collection techniques or other forms of information technology.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rule will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this rule affects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

[7] Federal Transit Administration (2021). ''Request for Information on Transit Worker Safety.'' *https://www.federalregister.gov/documents/2021/09/24/2021-20744/request-for-information-on-transit-worker-safety.*

minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Orders 14096 and 12898 (Environmental Justice)

Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All) (Apr. 21, 2023) (which builds upon Executive Order 12898) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012; see: *https://www.transportation.gov/transportation-policy/environmental-justice/department-transportation-order-56102a*) require DOT agencies to make achieving environmental justice (EJ) part of their mission consistent with statutory authority by identifying, analyzing, and addressing, as appropriate, disproportionate and adverse human health or environmental effects, including those related to climate change and cumulative impacts of environmental and other burdens on communities with EJ concerns. All DOT agencies seek to advance these policy goals and to engage in this analysis as appropriate in rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities. (See: *https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/environmental-justice-policy-guidance-federal-transit*).

FTA has evaluated this action under its environmental justice policies and FTA has determined that this action will not cause disproportionate and adverse human health and environmental effects on communities with EJ concerns.

Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this rule with the Unified Agenda.

List of Subjects in 49 CFR Part 671

Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

■ For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5329 and the delegations of authority at 49 CFR 1.91, FTA proposes to amend Chapter VI of Title 49, Code of Federal Regulations, by adding part 671, as set forth below:

PART 671—RAIL TRANSIT ROADWAY WORKER PROTECTION

Subpart A—General

Sec.
671.1 Purpose and Applicability.
671.3 Policy.
671.5 Definitions.

Subpart B—Roadway Worker Protection (RWP) Program and Manual

671.11 RWP Program.
671.13 RWP Manual.

Subpart C—Responsibilities

671.21 Rail Transit Agency.
671.23 Transit Worker.
671.25 State Safety Oversight Agency.

Subpart D—Required RWP Program Elements

671.31 Roadway Worker in Charge.
671.33 Job Safety Briefing.
671.35 Lone Worker.
671.37 Good Faith Safety Challenge.
671.39 Risk-Based Redundant Protections.
671.41 RWP Training and Qualification Program.
671.43 RWP Compliance Monitoring Program.

Subpart E—Recordkeeping

671.51 Recordkeeping.

Authority: 49 U.S.C. 5329, 49 CFR 1.91.

Subpart A—General

§ 671.1 Purpose and Applicability.

(a) The purpose of this part is to set forth the applicability of the rail transit Roadway Worker Protection (RWP) regulation.

(b) This part applies to rail transit agencies (RTA) that receive Federal financial assistance authorized under 49 U.S.C. Chapter 53; and to State Safety Oversight Agencies (SSOA) that oversee the safety of rail fixed guideway public transportation systems. This part does not apply to rail systems that are subject to the safety oversight of the Federal Railroad Administration (FRA).

(c) This part applies to transit workers who access any rail fixed guideway public transportation systems in the performance of work.

§ 671.3 Policy.

(a) This part establishes minimum safety standards for rail transit Roadway Worker Protection (RWP) to ensure the safe operation of public transportation systems and to prevent accidents, incidents, fatalities, and injuries to transit workers who may access the roadway in the performance of work. Each RTA and SSOA may prescribe additional or more stringent operating rules, safety rules, and other special instructions that are consistent with this part.

(b) The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States. Activities conducted to carry out these RWP safety standards must be integrated into the RTA's SMS, including the Safety Risk Management process, specified in § 673.25 of this chapter, and the Safety Assurance process, specified in § 673.27 of this chapter.

§ 671.5 Definitions.

As used in this part:

Accountable Executive means a single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a transit agency; responsibility for carrying out the transit agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the transit agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the transit agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

Ample time means the time necessary for a roadway worker to be clear of the track zone or in a place of safety 15 seconds before a rail transit vehicle moving at the maximum authorized speed on that track could arrive at the location of the roadway worker.

Equivalent entity means an entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.

Equivalent protection means alternative designs, materials, or methods that the RTA can demonstrate to the SSOA will provide equal or greater safety for roadway workers than the means specified in this part.

Flag person means a roadway worker designated by the RTA to direct or restrict the movement of rail transit vehicles or equipment past a point on a track to provide on-track safety for roadway workers, while engaged solely in performing that function.

Foul time protection is a method of establishing working limits in which a roadway worker is notified by the control center that no rail transit vehicles will be authorized to operate within a specific segment of track until the roadway worker reports clear of the track.

Fouling a track means the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving rail transit vehicle or on-track equipment. Any time an individual or equipment is within the track zone, it is fouling the track.

Individual rail transit vehicle detection means a process by which a lone worker acquires on-track safety by visually detecting approaching rail transit vehicles or equipment and leaving the track in ample time.

Job safety briefing means a meeting addressing the requirements of this part that is conducted prior to commencing work by the Roadway Worker in Charge, typically at the job site, to notify roadway workers or other transit workers about the hazards related to the work to be performed and the protections to eliminate or protect against those hazards. Alternatively, briefings can be conducted virtually for those individuals who are working remotely on the job site (*e.g.,* remote drone operators).

Lone worker means an individual roadway worker who is not afforded on-track safety by another roadway worker, who is not a member of a roadway work group, and who is not engaged in a common task with another roadway worker.

Maximum authorized speed means the highest speed permitted for the movement of rail transit vehicles established by the rail transit vehicle control system, service schedule, and operating rules. This speed is used when calculating ample time.

Minor tasks mean those tasks performed without the use of tools during the execution of which a roadway worker or other transit worker can visually assess their surroundings at least every five (5) seconds for approaching rail transit vehicles and that can be performed without violating ample time.

Near-miss means a narrowly avoided safety event.

On-track safety means a state of freedom from the danger of being struck by a moving rail transit vehicle or other equipment as provided by operating and safety rules that govern track occupancy by roadway workers, other transit workers, rail transit vehicles, and on-track equipment.

Place of safety means a space an individual or individuals can safely occupy outside the track zone, sufficiently clear of any rail transit vehicle, including any on-track equipment, moving on any track.

Qualified means a status attained by a roadway worker or other transit worker who has successfully completed required training, including refresher training, for; has demonstrated proficiency in; and is authorized by the RTA to perform the duties of a particular position or function.

Rail fixed guideway public transportation system means any fixed guideway system or any such system in engineering or construction, that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration, or any such system in engineering or construction. These systems include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

Rail transit agency (RTA) means any entity that provides services on a rail fixed guideway public transportation system.

Rail transit vehicle means any rolling stock used on a rail fixed guideway public transportation system, including but not limited to passenger and maintenance vehicles.

Rail transit vehicle approach warning means a method of establishing on-track safety by warning roadway workers of the approach of rail transit vehicles in ample time for them to move to or remain in a place of safety in accordance with the requirements of this part.

Redundant protection means at least one additional protection beyond individual rail transit vehicle detection to ensure on-track safety for roadway workers. Redundant protections may be procedural, physical, or both.

Roadway means land on which rail transit tracks and support infrastructure have been constructed to support the movement of rail transit vehicles.

Roadway maintenance machine means a device which is used on or near rail transit track for maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems. Roadway maintenance machines may have road or rail wheels or may be stationary.

Roadway worker means a transit worker whose duties involve inspection, construction, maintenance, repairs, or providing on-track safety such as flag persons and watchpersons on or near the roadway or right-of-way or with the potential of fouling track.

Roadway work group means two or more roadway workers organized to work together on a common task.

Roadway Worker in Charge means a roadway worker who is qualified under this part to establish on-track safety.

Roadway Worker Protection (RWP) means the polices, processes, and procedures implemented by an RTA to prevent safety events for transit workers who must access the roadway in the performance of their work.

RWP manual means the entire set of the RTA's on-track safety rules and instructions maintained together, including operating rules and other procedures concerning on-track safety protection and on-track safety measures, designed to prevent roadway workers from being struck by rail transit vehicles or other on-track equipment.

Safety event means an unexpected outcome resulting in injury or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

Sight distance means mean the length of roadway visible ahead for a roadway worker.

State Safety Oversight Agency (SSOA) means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and 49 CFR part 674.

Track access guide means a document that describes the physical characteristics of the RTA's track system, including track areas with close

or no clearance, curves with blind spots or restricted sight lines, areas with loud noise, and potential environmental conditions that require additional consideration in establishing on-track safety.

Track zone means an area identified by transit workers where a person or equipment could be struck by the widest equipment that could occupy the track, and typically is an area within six feet of the outside rail on both sides of any track.

Transit worker means any employee, contractor, or volunteer working on behalf of the RTA or SSOA.

Transit Worker Safety Reporting Program means the process required under § 673.23 of this chapter that allows transit workers to report safety concerns, including transit worker assaults, near-misses, and unsafe acts and conditions to senior management, provides protections for transit workers who report safety conditions to senior management, and describes transit worker behaviors that may result in disciplinary action.

Watchperson means a roadway worker qualified to provide warning to roadway workers of approaching rail transit vehicles or track equipment whose sole duty is to look out for approaching rail transit vehicles and track equipment and provide at least 15 seconds advanced warning plus time to clear based on the maximum authorized track speed for the work location to transit workers before the arrival of rail transit vehicles.

Working limits means a segment of track with explicit boundaries upon which rail transit vehicles and on-track equipment may move only as authorized by the roadway worker having control over that defined segment of track.

Work zone means the immediate area where work is being performed within the track zone.

Subpart B—Roadway Worker Protection (RWP) Program and Manual

§ 671.11 RWP program.

(a) Each RTA must adopt and implement an approved RWP program to improve transit worker safety that is consistent with Federal and State safety requirements and meets the minimum requirements of this part.

(b) The RWP program must include:

(1) An RWP manual as described in § 671.13.

(2) All of the RWP program elements described in Subpart D.

(c) Each RTA must submit its RWP manual and subsequent updates to its SSOA for review and approval as described in § 671.25.

§ 671.13 RWP manual.

(a) Each RTA must establish and maintain a separate, dedicated manual documenting its RWP program.

(b) The RWP manual must include the terminology, abbreviations, and acronyms used to describe the RWP program activities and requirements.

(c) The RWP manual must document:

(1) All elements of the RWP program in Subpart D.

(2) A definition of RTA and transit worker responsibilities as described in Subpart C—Responsibilities.

(3) Training, qualification, and supervision required for transit workers to access the track zone, by labor category or type of work performed.

(4) Processes and procedures, including any use of roadway workers to provide adequate on-track safety, for all transit workers who may access the track zone in the performance of their work, including safety and oversight personnel. Procedures for SSOA personnel to access the roadway must conform with the SSOA's risk-based inspection program.

(d) The RWP manual must include or incorporate by reference a track access guide to support on-track safety. The track access guide must be based on a physical survey of the track geometry and condition of the transit system and include, at a minimum:

(1) Locations with limited, close, or no clearance, including locations (such as alcoves, recessed spaces, or other designated places or areas of refuge or safety) with size or access limitations.

(2) Locations subject to increased rail vehicle or on-track equipment braking requirements or reduced rail transit vehicle operator visibility due to precipitation or other weather conditions.

(3) Curves with no or limited visibility.

(4) Locations with limited or no visibility due to obstructions or topography.

(5) All portals with restricted views.

(6) Locations with heavy outside noise or other environment conditions that impact on-track safety.

(7) Any other locations with access considerations.

(e) Following initial approval of the RWP manual by its SSOA, not less than every two years, the RTA must review and update its RWP manual to reflect current conditions and lessons learned in implementing the RWP program and information provided by the SSOA and FTA.

(f) The RTA must update its RWP manual and track access guide as necessary and as soon as practicable upon any change to the system which conflicts with any element of either document.

(g) The RWP manual must be distributed to all transit workers who access the roadway and redistributed after each revision.

Subpart C—Responsibilities

§ 671.21 Rail transit agency.

(a) *In General.* Each RTA must establish procedures to:

(1) Provide ample time and determine the appropriate sight distance based on maximum authorized track speeds.

(2) Ensure that individual rail transit vehicle detection is never used as the only form of protection in the track zone.

(3) Provide job safety briefings to all transit workers who must enter a track zone to perform work.

(4) Provide job safety briefings to all transit workers whenever a rule violation is observed.

(5) Provide transit workers with the right to challenge and refuse in good faith any assignment based on on-track safety concerns and resolve such challenges and refusals promptly and equitably.

(6) Require the reporting of unsafe acts, unsafe conditions, and near-misses on the roadway as part of the Transit Worker Safety Reporting Program and described in § 673.23(b) of this chapter.

(7) Ensure all transit workers who must enter a track zone to perform work understand, are qualified in, and comply with the RWP program.

(b) *Equipment and protections.* Each RTA must establish the requirements for on-track safety, including:

(1) Equipment that transit workers must have to access the roadway or a track zone by labor category, including personal protective equipment such as high-reflection vests, safety shoes, and hard hats.

(2) Credentials (*e.g.,* badge, wristband, RWP card) for transit workers to enter the roadway or track zone by labor category and how to display them so they are visible.

(3) Protections for emergency response personnel who must access the roadway or the track zone.

(4) Protections for multiple roadway work groups within a common work area in a track zone.

§ 671.23 Transit worker.

(a) *RWP program.* Each transit worker must follow the requirements of the RTA's RWP program by position and labor category.

(b) *Fouling the track.* A transit worker may only foul the track once they have received appropriate permissions and

redundant protections have been established as specified in the RWP manual.

(c) *Acknowledgement of protections providing on-track safety.* A transit worker must understand and acknowledge in writing the protections providing on-track safety measures for their specific task before accessing the roadway or track zone.

(d) *Refusal to foul the track.* A transit worker may refuse to foul the track if the transit worker makes a good faith determination that that they believe any RWP assignment is unsafe or would violate the RTA's RWP program.

(e) *Reporting.* A transit worker must report unsafe acts and conditions and near-misses related to the RWP program as part of the RTA's Transit Worker Safety Reporting Program.

§ 671.25 State safety oversight agency.

(a) *Review and approve RWP program elements.* The SSOA must review and approve the RWP manual and any subsequent updates for each RTA within its jurisdiction within the following deadlines:

(1) Initial approval of the RWP program elements must be completed within 90 calendar days of receipt of the program, and

(2) The SSOA also must submit all approved RWP program elements for each RTA in its jurisdiction, and any subsequent updates, to FTA within 30 calendar days of approving them.

(b) *RWP program oversight.* The SSOA must update its program standard to explain the role of the SSOA in overseeing an RTA's execution of its RWP program.

(c) *Annual RWP program audit.*

(1) The SSOA must conduct an annual audit of the RTA's compliance with its RWP program, including all required RWP program elements, for each RTA that it oversees.

(2) The SSOA must issue a report with any findings and recommendations arising from the audit, which must include, at minimum:

(i) An analysis of the effectiveness of the RWP program, including, at a minimum, a review of:

(A) All RWP-related events over the period covered by the audit.

(B) All RWP-related reports made to the Transit Worker Safety Reporting Program over the period covered by the audit.

(C) All documentation of instances where a transit worker(s) challenged and refused in good faith any assignment based on on-track safety concerns and documentation of the resolution for any such instance during the period covered by the audit.

(D) An assessment of the adequacy of the track access guide, including whether the guide reflects current track geometry and conditions.

(E) A review of all training and qualification records for transit workers who must enter a track zone to perform work.

(F) A representative sample of written job safety briefing confirmations as described in § 671.33.

(G) The compliance monitoring program described in § 671.43.

(ii) Recommendations for improvements, if necessary or appropriate.

(iii) Corrective action plan(s), if necessary or appropriate, must be, developed and executed consistent with requirements established in part 674.

(3) The RTA must be given an opportunity to comment on any findings and recommendations.

Subpart D—Required RWP Program Elements

§ 671.31 Roadway worker in charge.

(a) *On-track safety and supervision.* The RTA must designate one roadway worker in charge for each roadway work group whose duties require fouling a track.

(1) The roadway worker in charge must be qualified under the RTA's training and qualification program as specified in § 671.41.

(2) The roadway worker in charge may be designated generally or may be designated specifically for a particular work situation.

(3) The roadway worker in charge is responsible for the on-track safety for all members of the roadway work group.

(4) The roadway worker in charge must serve only the function of maintaining on-track safety for all members of the roadway work group and perform no other unrelated job function while designated for duty.

(b) *Communication.* The RTA must ensure that the roadway worker in charge provides a job safety briefing to all roadway workers before any member of a roadway work group fouls a track, following the requirements specified in § 671.33.

(1) The roadway worker in charge must provide the job safety briefing to all members of the roadway work group before the on-track safety procedures change during the work period, or immediately following an observed violation of on-track safety procedures before track zone work continues.

(2) In the event of an emergency, any roadway worker who cannot be notified in advance of changes to on-track safety, must be warned immediately to leave the roadway and must not return until on-track safety is re-established, and a job safety briefing is completed.

§ 671.33 Job safety briefing.

(a) *General.* The RTA must ensure the roadway worker in charge provides any roadway worker who must foul a track with a job safety briefing prior to fouling the track, every time the roadway worker fouls the track.

(b) *Elements.* The job safety briefing must include, at a minimum, the following, as appropriate:

(1) A discussion of the nature of the work to be performed and the characteristics of the work, including work plans for multiple roadway worker groups within a single work area.

(2) Working limits.

(3) The hazards involved in performing the work, as described in Federal Railroad Administration and the Occupational Safety and Health Administration's guidance on hazard identification as part of a job safety briefing.

(4) Information on how on-track safety is to be provided for each track identified to be fouled and identification and location of key personnel such as a watchperson and the roadway worker in charge.

(5) Instructions for each on-track safety procedure to be followed, including appropriate flags and proper flag placement.

(6) Communication roles and responsibilities for all transit workers involved in the work.

(7) Safety information about any adjacent track, defined as track next to or adjoining the track zone where on-track safety has been established, and identification of roadway maintenance machines or on-track equipment that will foul such tracks.

(8) Information on the accessibility of the roadway worker in charge and alternative procedures in the event the roadway worker in charge is no longer accessible to members of the roadway work group.

(9) Required personal protective equipment.

(10) Designated place(s) of safety of a sufficient size to accommodate all roadway workers within the work area.

(11) The means for determining ample time.

(c) *Confirmation and written acknowledgement.* A job safety briefing is complete only after:

(1) The roadway worker in charge confirms that each roadway worker understands the on-track safety procedures and instructions.

(2) Each roadway worker acknowledges the briefing and the

requirement to use the required personal protective equipment in writing.

(3) The roadway worker in charge confirms in writing that they attest to each roadway worker's understanding of the briefing and has received written acknowledgement of the briefing from each worker.

(d) *Follow-up briefings.* If there is any change in the scope of work or roadway work group after the initial job safety briefing, or if a violation of on-track safety is observed, a follow-up job safety briefing must be conducted.

§ 671.35 Lone worker.

(a) *On-track safety and supervision.* The RTA may authorize lone workers to perform limited duties that require fouling a track.

(1) The lone worker must be qualified as a roadway worker in charge and lone worker under the RTA's training and qualification program as specified in § 671.41.

(2) The lone worker may perform routine inspection or minor tasks and move from one location to another. The lone worker may not use power tools and may only access locations defined in the track access guide as appropriate for lone workers, *i.e.,* no loud noises, no restricted clearances, etc.

(3) The lone worker may not use individual rail transit vehicle detection, where the lone worker is solely responsible for seeing approaching trains and clearing the track before the trains arrive, as the only form of on-track safety.

(b) *Communication.* Each lone worker must communicate prior to fouling the track with a supervisor or another designated employee to receive an on-track safety job briefing consisting of the elements in § 671.33(b), including a discussion of their planned work activities and the procedures that they intend to use to establish on-track safety. The lone worker must acknowledge and document the job safety briefing in writing consistent with § 671.33(c).

§ 671.37 Good faith safety challenge.

(a) *Written procedure.* Each RTA must document its procedures that provide to every roadway worker the right to challenge and refuse in good faith any RWP assignment they believe is unsafe or would violate the RTA's RWP program.

(b) *Prompt and equitable resolution.* The written procedure must include methods or processes to achieve prompt and equitable resolution of any challenges and refusals made.

(c) *Requirements.* The written procedure must include a requirement that the roadway worker provide a description of the safety concern regarding on-track safety and must remain clear of the roadway or track zone until the challenge and refusal is resolved.

§ 671.39 Risk-based redundant protections.

(a) *General requirements.*

(1) Each RTA must identify and provide redundant protections for each category of work roadway workers perform the roadway or track.

(2) Redundant protections must be established to ensure on-track safety for multiple roadway work groups within a common work area.

(b) *Safety risk assessment to determine redundant protections.* Each RTA must assess the risk associated with transit workers accessing the roadway using the methods and processes established under § 673.25(c) of this chapter. The RTA must use the methods and processes established under § 673.25(d) of this chapter to establish redundant protections for each category of work performed by roadway workers on the rail transit system and must include lone workers.

(1) The safety risk assessment must be consistent with the RTA's Agency Safety Plan and the SSOA's Program Standard.

(2) The safety risk assessment may be supplemented by engineering assessments, inputs from the safety assurance process established under § 673.27 of this chapter, the results of safety event investigation, and other safety risk management strategies or approaches.

(3) The RTA must review and update the safety risk assessment at least every two years to include current conditions and lessons learned from safety events, actions taken to address reports of unsafe acts and conditions, and near-misses, and results from compliance monitoring regarding the effectiveness of the redundant protections.

(4) The SSOA may also identify and require the RTA to implement alternate redundant protections based on the RTA's unique operating characteristics and capabilities.

(c) *Categories of work requiring redundant protections.* Redundant protections must be identified for roadway workers performing different categories of work on the roadway and within track zones, which may include but are not limited to categories such as:

(1) Roadway workers moving from one track zone location to another.

(2) Roadway workers performing minor tasks.

(3) Roadway workers conducting visual inspections.

(4) Roadway workers using hand tools, machines, or equipment in conducting testing of track system components or non-visual inspections.

(5) Roadway workers using hand tools, machines, or equipment in performing maintenance, construction, or repairs.

(6) Lone workers accessing the roadway or track zone or performing visual inspections or minor tasks.

(d) *Types of redundant protections.*

(1) Redundant protections may be procedural or physical.

(i) Procedural protections alert rail transit vehicle operators to the presence of roadway workers and use radio communications, personnel, signage, or other means to direct rail transit vehicle movement.

(ii) Physical protections physically control the movement of rail transit vehicles into or through a work zone.

(2) Redundant protections may include:

(i) Approaches consistent with the Federal Railroad Administration rules governing redundant protections.

(ii) Rail transit vehicle approach warning.

(iii) Foul time.

(iv) Exclusive track occupancy, defined as a method of establishing working limits, as part of on-track safety, in which movement authority of rail transit vehicles and other equipment is withheld by the control center or restricted by flag persons and provided by a roadway worker in charge.

(v) Warning signs, flags, or lights.

(vi) Flag persons.

(vii) Lock outs from the rail transit vehicle control systems or lining and locking track switches or otherwise physically preventing entry and movement of rail transit vehicles.

(viii) Secondary warning devices and alert systems.

(ix) Shunt devices and portable trip stops to reduce the likelihood of rail transit vehicles from entering work zone with workers.

(x) Restricting work to times when propulsion power is down with verification that track is out of service, and when barriers are placed that physically prevent rail transit vehicles, including on-track equipment, from entering the work zone.

(xi) Use of walkways in tunnels and on elevated structures to reduce roadway worker time in the track zone.

(xii) Speed restrictions.

(3) Redundant protections for lone workers must include, at a minimum,

foul time or an equivalent protection approved by the SSOA.

§ 671.41 RWP training and qualification program.

(a) *General.* Each RTA must adopt an RWP training program.

(1) The RWP training program must address all transit workers responsible for on-track safety, by position, including roadway workers, operations control center personnel, rail transit vehicle operators, operators of on-track equipment and roadway maintenance machines, and any others with a role in providing on-track safety or fouling a track for the performance of work.

(2) The RWP training program must be completed for the relevant position before an RTA may assign a transit worker to perform the duties of a roadway worker, to oversee or supervise access to the track zone from the operations control center, or to operate vehicles, on-track equipment, and roadway maintenance machines on the rail transit system.

(3) The RWP training program must address RWP hazard recognition and mitigation, and lessons learned through the results of compliance testing, near-miss reports, reports of unsafe acts or conditions, and feedback received on the training program.

(4) The RWP training program must include initial and refresher training, by position. Refresher training must occur every two years at a minimum.

(5) The RTA must review and update its RWP training program not less than every two years, to reflect lessons learned in implementing the RWP program and information provided by the SSOA and FTA. The RTA must provide an opportunity for roadway worker involvement in the RWP training program review and update process.

(b) *Required elements.* The RWP training program must include interactive training with the opportunity to ask the RWP trainer questions and raise and discuss RWP issues.

(1) Initial training must include experience in a representative field setting.

(2) Initial and refresher training must include demonstrations and assessments to ensure the ability to comply with RWP instructions given by transit workers performing, or responsible for, on-track safety and RWP functions.

(c) *Minimum contents for RWP training.* The RWP training program must address the following minimum contents:

(1) How to interpret and use the RTA's RWP manual.

(2) How to challenge and refuse in good faith RWP assignments.

(3) How to report unsafe acts, unsafe conditions, and near-misses after they occur, and the mandatory duty to make such reports.

(4) Recognition of the track zone and understanding of the space around tracks within which on-track safety is required, including use of the track access guide.

(5) The functions and responsibilities of all transit workers involved in on-track safety, by position.

(6) Proper compliance with on-track safety instructions given by transit workers performing or responsible for on-track safety functions.

(7) Signals and directions given by watchpersons, and the proper procedures upon receiving a rail transit vehicle approach warning from a watchperson.

(8) The hazards associated with working on or near rail transit tracks to include traction power, if applicable.

(9) Rules and procedures for redundant protections identified under 671.37 and how they are applied to RWP.

(10) Requirements for safely crossing rail transit tracks in yards and on the mainline.

(d) *Specialized training and qualification for transit workers with additional responsibilities for on-track safety.* The RWP training program must include additional training for watchpersons, flag persons, lone workers, roadway workers in charge, and other transit workers with responsibilities for establishing, supervising, and monitoring on-track safety.

(1) This training must cover the content and application of the additional RWP program requirements carried out by these positions and must address the relevant physical characteristics of the RTA's system where on-track safety may be established.

(2) This training must include demonstrations and assessments to confirm the transit worker's ability to perform these additional responsibilities.

(3) Refresher training on additional responsibilities for on-track safety, by position, must occur every two years at a minimum.

(e) *Competency and qualification of training personnel.* Each RTA must ensure that transit workers providing RWP training are qualified and have active RWP certification at the RTA to provide effective RWP training, and at a minimum must consider the following:

(1) A trainer's experience and knowledge of effective training techniques in the chosen learning environment.

(2) A trainer's experience with the RTA RWP program.

(3) A trainer's knowledge of the RTA RWP rules, operations, and operating environment, including applicable operating rules.

(4) A trainer's knowledge of the training requirements specified in this part.

§ 671.43 RWP compliance monitoring program.

(a) *General.* Each RTA must adopt a program for monitoring its compliance with the requirements specified in its RWP program.

(b) *Required elements.* The RWP compliance monitoring program must include inspections, observations, and audits, consistent with safety performance monitoring and measurement requirements in the RTA's Agency Safety Plan described in § 673.27 of this chapter and the SSOA's Program Standard.

(1) The RTA must provide monthly reports to the SSOA documenting the RTA's compliance with and sufficiency of the RWP program.

(2) The RTA must provide an annual briefing to the Accountable Executive and the Board of Directors, or equivalent entity, regarding the performance of the RWP program and any identified deficiencies requiring corrective action.

Subpart E—Recordkeeping

§ 671.51 Recordkeeping.

(a) Each RTA must maintain the documents that set forth its RWP program, documents related to the implementation of the RWP program and results from the procedures, processes, assessments, training, and activities specified in this part for the RWP program.

(b) Each RTA must maintain records of its compliance with this requirement, including records of transit worker RWP training and refresher training, for a minimum of three years after they are created.

(c) These documents must be made available upon request by the FTA or other Federal entity, or a SSOA having jurisdiction.

Veronica Vanterpool,

Acting Administrator.

[FR Doc. 2024–06251 Filed 3–22–24; 8:45 am]

BILLING CODE 4910–57–P

Notices

Federal Register
Vol. 89, No. 58
Monday, March 25, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Census Bureau

[Docket Number: 240305–0069]

X–RIN 0607–XC075

Current Mandatory Business Surveys

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) will conduct the following current mandatory business surveys in 2024: Annual Integrated Economic Survey, Annual Business Survey, Business and Professional Classification Report, and the Business Enterprise Research and Development Survey. We have determined that data collected from these surveys are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

ADDRESSES: The Census Bureau will make available the reporting instructions to the organizations included in the surveys. Additional copies are available upon written request to the Director, 4600 Silver Hill Road, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Nick Orsini, Associate Director for Economic Programs, telephone: 301–763–1858; email: *Nick.Orsini@census.gov*.

SUPPLEMENTARY INFORMATION: The surveys described herein are authorized by title 13, United States Code (U.S.C.), sections 131 and 182 and are necessary to furnish current data on the subjects covered by the major censuses. These surveys are made mandatory under the provisions of sections 224 and 225 of title 13, U.S.C. These surveys will provide continuing and timely national statistical data for the period between economic censuses. The data collected in the surveys will be within the general scope and nature of those inquiries covered in the economic census. The most recent economic census was conducted in 2023 for the reference year 2022. The next economic census will occur in 2028 for the reference year 2027.

Notice of specific reporting requirements for each survey, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be provided by mail or email only to those required to complete these surveys.

Annual Integrated Economic Survey (AIES)

The AIES is a new survey designed to combine several existing Census Bureau annual survey collections to reduce respondent burden and simultaneously increase data quality and operational efficiencies. The AIES integrates and replaces the following existing annual collections: the Annual Retail Trade Survey (ARTS) (Office of Management and Budget (OMB) control number 0607–0013), the Annual Wholesale Trade Survey (AWTS) (OMB control number 0607–0195), the Service Annual Survey (SAS) (OMB control number 0607–0422), the Annual Survey of Manufactures (ASM) (OMB control number 0607–0449), the Annual Capital Expenditures Survey (ACES) (OMB control number 0607–0782), the Manufacturer's Unfilled Orders Survey (M3UFO) (OMB control number 0607–0561), and the Report of Organization (OMB control number 0607–0444).

The AIES covers all domestic, private, non-farm employer businesses in the U.S. (50 States and the District of Columbia) as defined by the 2017 North American Industry Classification System (NAICS). Exclusions are most foreign operations of U.S. businesses and most government operations (including the U.S. Postal Service), agricultural production companies, and private households. The AIES sample is selected from a frame of approximately 5.4 million companies constructed from the Business Register (BR), which is the Census Bureau's master business list.

The AIES estimates will include data on employment; revenue including sales; shipments; receipts; taxes, contributions; gifts and grants; products; e-commerce activity; operating expenses including purchased services; payroll; benefits; rental payments; utilities; interest; equipment; materials and supplies; other detailed operating expenses; and assets which includes capital expenditures; inventories; depreciable assets; and robotics.

The AIES will provide continuous and timely national and subnational statistical data on the economy. Government program officials, industry organization leaders, economic and social analysts, business entrepreneurs, and domestic and foreign researchers in academia, business, and government will use statistics from AIES.

More information regarding the AIES can be found in the Information Collection Request approved by the Office of Management and Budget on February 7, 2024 at the following link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202310-0607-003*

Annual Business Survey (ABS)

The ABS provides information on selected economic and demographic characteristics for businesses and business owners by sex, ethnicity, race, and veteran status. Further, the survey measures research and development for microbusinesses, new business topics such as innovation and technology, as well as other business characteristics. The ABS includes all nonfarm employer businesses filing Internal Revenue Service (IRS) tax forms as individual proprietorships, partnerships, or any other type of corporation, with receipts of $1,000 or more. The ABS is sponsored by the National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) and conducted by the Census Bureau.

More information regarding the ABS can be found in the Information Collection Request approved by the Office of Management and Budget on April 24, 2023 at the following link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202301-0607-003*.

Business and Professional Classification Report

The Business and Professional Classification Report collects one-time data on a firm's type of business activity from a sample of businesses that were recently assigned Federal Employer

Identification Numbers or recently added to the scope of the Census Bureau's current business surveys. The data are used to update the sampling frames for our current business surveys. Additionally, the business classification data will help ensure businesses are directed to complete the correct report in the economic census.

More information regarding the Business and Professional Classification Report can be found in the Information Collection Request approved by the Office of Management and Budget on September 15, 2021 at the following link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202105-0607-002*.

Business Enterprise Research and Development Survey (BERD)

The BERD collects annual data on spending for research and development activities by businesses. The BERD collects foreign as well as domestic spending information, more detailed information about the R&D workforce, and information regarding intellectual property from U.S. businesses. The Census Bureau collects and compiles this information in accordance with a joint project agreement between the National Science Foundation (NSF) and the Census Bureau. The NSF posts the BERD information results on their website.

More information regarding the BERD can be found in the Information Collection Request approved by the Office of Management and Budget on December 15, 2021 at the following link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202108-0607-005*.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C. chapter 45, OMB approved the surveys described in this notice under the following OMB control numbers: AIES, 0607–1024; ABS, 0607–1004; Business and Professional Classification Report, 0607–0189; and BERD, 0607–0912.

Based upon the foregoing, I have directed that the current mandatory business surveys be conducted for the purpose of collecting these data.

Robert L. Santos, Director, Census Bureau, approved the publication of this notice in the **Federal Register**.

Dated: March 19, 2024.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2024–06226 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–07–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; The American Community Survey (ACS) and Puerto Rico Community Survey (PRCS)

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite 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. Public comments were previously requested via the **Federal Register** on October 20, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: The American Community Survey and the Puerto Rico Community Survey.

OMB Control Number: 0607–0810.

Form Number(s): ACS–1, ACS–1(SP), ACS–1(PR), ACS–1(PR)SP, ACS–1(GQ), ACS–1(PR)(GQ), ACS Housing Unit internet questionnaire (no form number), ACS nonresponse follow up CAPI (Computer Assisted Personal Interview) electronic instrument (no form number), ACS Failed Edit Follow up CATI (Computer Assisted Telephone Interview) electronic instrument (no form number), ACS Telephone Questionnaire Assistance CATI electronic instrument (no form number), ACS Group Quarters internet listing instrument (no form number), ACS Group Quarters Facility Questionnaire CAPI electronic instrument (no form number), ACS Group Quarters internet electronic instrument (no form number), ACS Group Quarters Resident CAPI electronic instrument (no form number), and ACS Reinterview CATI/CAPI electronic instrument (no form number).

Type of Request: Regular submission. Request for a Revision of a Currently Approved Collection.

Number of Respondents: 3,576,000 for household respondents; 20,100 for facility contacts in group quarters; 170,900 people in group quarters; 22,900 households for reinterview; and 1,400 group quarters facility contacts for reinterview. The total estimated number of respondents is 3,791,000.

Average Hours per Response: 40 minutes for the average household questionnaire; 15 minutes for a group quarters facility contact questionnaire; 25 minutes for a group quarters person questionnaire; 10 minutes for a household reinterview; 10 minutes for a group quarters facility contact reinterview.

Burden Hours: 2,384,000 for household respondents; 5,025 for contacts in group quarters; 71,208 for group quarters residents; 3,817 households for reinterview; and 233 group quarters contacts for reinterview. The estimate is an annual average of 2,464,283 burden hours.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) for revisions to the American Community Survey (ACS). The ACS is one of the Department of Commerce's most valuable data products, used extensively by businesses, nongovernmental organizations (NGOs), local governments, and many federal agencies. In conducting this survey, the Census Bureau's top priority is respecting the time and privacy of the people providing information while preserving its value to the public.

In June 2018, the Census Bureau solicited proposals for new or revised ACS content from over 25 federal agencies. For new questions, the proposals explained why these data were needed and why other data sources that provide similar information were not sufficient. Proposals for new content were reviewed to ensure that the requests met a statutory or regulatory need for data at small geographic levels or for small populations.

The Census Bureau, in consultation with the OMB and the Interagency Council on Statistical Policy Subcommittee on the ACS, determined which proposals moved forward. Approved proposals for new content or changes to current content were tested via the ACS content change process. This process included cognitive testing and field testing of several topics, including household roster, educational attainment, health insurance coverage, disability, and labor force questions.

The testing also included evaluating the addition of three new topics on electric vehicles, sewage disposal, and solar panels.

A **Federal Register** notice (FRN) posted on February 9, 2021, solicited public comments on the initial proposals for testing changes and additions to the ACS content. Another FRN was posted on March 21, 2022, which contained more details on the proposed changes for each topic and the operational details of the 2022 ACS Content Test. The most recent FRN, posted on October 20, 2023, invited the public to comment on the proposed changes to the 2025 ACS and PRCS after analyzing the result of the 2022 Content Test. The public provided comments through December 19, 2023. The Census Bureau received over 12,000 comments on the most recent 60-day FRN for the 2025 ACS content changes. Over 98 percent of the comments received were about the changes to the disability questions. One point three percent were on the other topics with a proposed change or the topic was not specified in the comment. An additional 0.7 percent were on other topics or proposed new questions not included in the 2022 ACS Content Test, general comments about the ACS, recommendations about data collection methods, or were not applicable to the 60-day FRN.

The majority of commenters expressed concerns about the changes proposed to the disability questions and asked the Census Bureau not to proceed with the changes. Most commenters also expressed dissatisfaction with not having been included in the process. They indicated that the Census Bureau should conduct more comprehensive public engagement before proposing modifications to the disability questions. Some of these comments also suggested that a taskforce be formed. Many letters incorporated the motto and sentiment of, ''Nothing About Us Without Us.'' In deference to the large number (12,188) of comments that expressed concerns about the proposed change to the disability questions, the Census Bureau plans to retain the current ACS disability questions for the 2025 ACS. Refer to the Census Bureau Director's Blog on the Next Steps on the ACS Disability Questions.

The vast majority of comments on the other topics acknowledged the value of the data from the new and revised questions. The Census Bureau will proceed with the proposal of changes on all other topics for the 2025 ACS.

The Census Bureau and National Center for Health Statistics (NCHS) stand behind the statistical validity of the 2022 ACS Content Test results and the practical utility of the proposed disability change. However, we recognize that statistical validity and practical utility for NCHS should be only two components of the decision about whether to change questions on the ACS—we must also consider the needs of other data users inside and outside of government.

ACS Background

The Census Bureau developed the ACS to collect and update demographic, social, economic, and housing data every year that are essentially the same as the ''long-form'' data that the Census Bureau formerly collected once a decade as part of the decennial census. The ACS is an ongoing monthly survey that collects detailed housing and socioeconomic data from about 3.54 million addresses in the United States and about 36,000 addresses in Puerto Rico each year. The ACS also collects detailed socioeconomic data from about 170,000 residents living in group quarters facilities in the United States and about 900 in Puerto Rico. The ACS is now the only source of comparable data about social, economic, housing, and demographic characteristics for small areas and small subpopulations across the nation and in Puerto Rico. Every community in the nation continues to receive a detailed, statistical portrait of its social, economic, housing, and demographic characteristics each year through one-year and five-year ACS products.

ACS Contact Strategies for Housing Units

To collect ACS data, the Census Bureau uses a well-researched mail contact strategy to encourage self-response to the survey. For addresses that were mailed survey materials but did not respond by mail, internet, or by calling our telephone questionnaire assistance line, the Census Bureau selects a subsample of all households and assigns them to the the nonresponse follow-up data collection operation. Unmailable household addresses are sampled and also included in the nonresponse follow-up data collection operation.

To encourage self-response in the ACS, the Census Bureau sends up to five mailings to housing units selected to be in the sample. The first mailing, sent to all mailable addresses in the sample, includes an invitation to participate in the ACS online and states that a paper questionnaire will be sent in a few weeks to those unable to respond online. The second mailing is a letter that reminds respondents to complete the survey online, thanks them if they have already done so, and informs them that a paper questionnaire will be sent at a later date if the Census Bureau does not receive their response. In a third mailing, the paper questionnaire package is sent only to those sample addresses that have not completed the online questionnaire within two and a half weeks. The fourth mailing is a postcard that reminds respondents to respond and informs them that an interviewer may contact them if they do not complete the survey. A fifth mailing is a letter sent to respondents who have not completed the survey within five weeks. This letter provides a due date and reminds the respondents to complete their survey to be removed from future contact. The Census Bureau will ask those who fill out the survey online to provide an email address, which will be used to send an email reminder to households that did not complete the online form. The reminder asks them to log back in to finish responding to the survey. If the Census Bureau does not receive a response or if the household refuses to participate, the address may be selected for nonresponse follow-up data collection where the interview can be collected by telephone or personal visit using computer-assisted interviewing.

Some addresses are deemed unmailable because the address is incomplete or directs mail only to a post office box. The Census Bureau currently collects data for these housing units using both online and computer-assisted personal interviewing. A small sample of respondents from the nonresponse follow-up data collection interview are recontacted for quality assurance purposes.

PRCS Contact Strategies for Housing Units

For sample housing units in the Puerto Rico Community Survey, a different mail strategy is employed. The Census Bureau sends up to five mailings to a Puerto Rico address selected to be in the sample. The first mailing includes a prenotice letter. The second and fourth mailings include the paper questionnaire. The third and fifth mailings serve as a reminder to respond to the survey. The mail strategy has no references to an internet response option. If the Census Bureau does not receive a response or if the household refuses to participate, the address may be selected for non-response follow-up data collection where the interview can be collected by telephone or personal visit using computer-assisted interviewing technology.

Puerto Rico addresses deemed unmailable because the address is

incomplete or directs mail only to a post office box are collected by computer-assisted personal interviewing. A small sample of respondents from the nonresponse follow-up data collection interview are recontacted for quality assurance purposes.

ACS/PRCS Contact Strategy for Group Quarters

The Census Bureau collects data for group quarters through personal interview, online, or by paper. The Census Bureau can obtain the facility information by allowing the group quarters contact to upload the roster of residents online or by conducting a personal visit interview with a group quarters contact. Once the interviewer obtains the roster of residents, they can randomly select residents for person-level interviews. During the person-level phase, a computer-assisted personal interviewing instrument is used to collect detailed information for each sampled resident. Interviewers also have the option to distribute a bilingual (English/Spanish) questionnaire to residents for self-response if unable to complete a computer-assisted personal interviewing interview. Residents in some group quarters will have the option to self-respond to the survey online. A small sample of respondents are recontacted for quality assurance purposes.

Statistics produced from the ACS program may include a combination of data collected on the survey from respondents as well as administrative data from other sources.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 141, 193, 221, and 223.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 *https://www.reginfo.gov/public/do/PRAMain* for the particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0810.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–06256 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reporting Process for Complaint of Employment Discrimination Used By Permanent Employees and Applicants for Employment at DOC and Complaint of Employment Discrimination for the Decennial Census

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite 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. Public comments were previously requested via the **Federal Register** on December 12, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Office of The Secretary, Office of Civil Rights, Commerce.

Title: Reporting Process for Complaint of Employment Discrimination Used by Permanent Employees and Applicants for Employment at DOC and Complaint of Employment Discrimination for the Decennial Census.

OMB Control Number: 0690–0015.

Form Number(s): CD–498, CD–498A.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 165 (correction from the 60-day notice).

Average Hours per Response: ½ hour (30 minutes).

Burden Hours: 87½ hours.

Needs and Uses: The Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR 1614.106 require that a Federal employee or applicant for Federal employment alleging discrimination based on race, color, sex (including sexual orientation, transgender status, and pregnancy), national origin, religion, age, disability, pregnancy accommodation, or reprisal for protected activity must submit a signed statement that is sufficiently precise to identify the actions or practices that form the bases of the complaint. The individual completing the form is asked to identify the bureau at which the alleged discrimination took place, and whether the individual worked at that bureau at the time of the alleged discrimination. The individual completing the form is also asked to describe the alleged discriminatory action(s) as clearly as possible and include the date(s) and to articulate the basis or bases of the complaint (race, color, sex, etc.). Further, the individual completing the form is asked to identify the remedy(ies) sought for the alleged discrimination. Although complainants are not required to use the proposed form to file their complaints, the Office of Civil Rights strongly encourages its use to ensure efficient case processing and trend analyses of complaint activity.

Affected Public: Individuals and households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: 29 CFR 1614.106.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–06200 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–52–2024]

Foreign-Trade Zone 224; Application for Subzone; Jubilant HollisterStier, LLC; Spokane, Washington

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Spokane Airport Board, grantee of FTZ 224, requesting subzone status for

the facility of Jubilant HollisterStier, LLC, located in Spokane, Washington. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on March 19, 2024.

The proposed subzone (20.20 acres) is located at 3525 North Regal Street, Spokane, Washington. A notification of proposed production activity has been submitted and will be published separately for public comment. The proposed subzone would be subject to the existing activation limit of FTZ 224.

In accordance with the FTZ Board's regulations, Qahira El-Amin of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is May 6, 2024. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 20, 2024.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Qahira El-Amin at *Qahira.El-Amin@trade.gov.*

Dated: March 20, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–06241 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Application for NATO International Competitive Bidding

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

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), 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 preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 24, 2024.

ADDRESSES: Interested persons are invited to submit comments by email to Mark Crace, IC Liaison, Bureau of Industry and Security, at *mark.crace@bis.doc.gov* or to *PRAcomments@doc.gov*. Please reference OMB Control Number 0694–0142 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mark Crace, IC Liaison, Bureau of Industry and Security, phone 202–482–8093 or by email at *mark.crace@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

All U.S. firms desiring to participate in the NATO International Competitive Bidding (ICB) process under the NATO Security Investment Program (NSIP) must be certified as technically, financially, and professionally competent. The U.S. Department of Commerce provides the Declaration of Eligibility that certifies these firms. Any such firm seeking certification is required to submit a completed Form BIS–4023P along with a current annual financial report and a resume of past projects in order to become certified and placed on the Consolidated List of Eligible Bidders.

II. Method of Collection

Electronically or on paper.

III. Data

OMB Control Number: 0694–0142.

Form Number(s): BIS–4023P.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Voluntary.

Legal Authority: Section 401 (10) of Executive order 12656 (November 18, 1988), 15 U.S.C. 1512.

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. 2024–06253 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Competitive Enhancement Needs Assessment Survey Program

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), 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 preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 24, 2024.

ADDRESSES: Interested persons are invited to submit comments by email to Mark Crace, IC Liaison, Bureau of Industry and Security, at *mark.crace@bis.doc.gov* or to *PRAcomments@doc.gov*. Please reference OMB Control Number 0694–0083 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mark Crace, IC Liaison, Bureau of Industry and Security, phone 202–482–8093 or by email at *mark.crace@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is necessary under the Defense Production Act of 1950 (DPA), as amended, and related Executive Order 13603. Under the Competitive Enhancement Needs Assessment Survey Program (The Program), the Bureau of Industry and Security's Office of Technology Evaluation (OTE) distributes surveys nationwide to businesses in order to determine which government competitive enhancement, procurement opportunity and business diversification programs would benefit their competitive position in the marketplace. The results of the mandatory surveys allow The Program to align industry stakeholders with the Federal and State resources best suited to meet their individual needs. The expertise of 70+ Federal and State government organizations is made available to The Program, in addition to the excess equipment and facilities resident in closed Federal installations plus the excess government equipment at government contractor facilities. The companies respond to the OTE program surveys on a mandatory basis.

II. Method of Collection

Electronically or on paper.

III. Data

OMB Control Number: 0694–0083.

Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,400.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 2,400.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Mandatory.

Legal Authority: Sec. 2151, Public Law 81–774, DPA 1950, E.O. 12919.

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. 2024–06252 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Statement by Ultimate Consignee and Purchaser

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

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), 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. This collection is necessary under the Export Administration Regulations (EAR). The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 24, 2024.

ADDRESSES: Interested persons are invited to submit comments by email to Mark Crace, IC Liaison, Bureau of Industry and Security, at *mark.crace@bis.doc.gov* or to *PRAcomments@doc.gov*. Please reference OMB Control Number 0694–0021 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mark Crace, IC Liaison, Bureau of Industry and Security, phone 202–482–8093 or by email at *mark.crace@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Sections 4812(b)(7) and 4814(b)(1)(B) of the Export Control Reform Act (ECRA), authorizes the President and the Secretary of Commerce to issue regulations to implement the ECRA including those provisions authorizing the control of exports of U.S. goods and technology to all foreign destinations, as necessary for the purpose of national security, foreign policy and short supply, and the provision prohibiting U.S. persons from participating in certain foreign boycotts.

Export control authority has been assigned directly to the Secretary of Commerce by the ECRA and delegated by the President to the Secretary of Commerce. This authority is administered by the Bureau of Industry and Security through the Export Administration Regulations (EAR). The ECRA is not permanent legislation, and when it has lapsed due to the failure to enact a timely extension, Presidential executive orders under the International Emergency Economic Powers Act (IEEPA) have directed and authorized the continuation in force of the EAR.

The collection is necessary under § 748.11 of the EAR. This section states that the Form BIS–711, Statement by Ultimate Consignee and Purchaser, or a statement on company letterhead (in accordance with § 748.11(b)(1), unless one or more of the exemptions set forth in Section 748.11(a)) exists. The BIS–711 or letter provides information on the foreign importer receiving the U.S. technology and how the technology will be utilized. The BIS–711 or letter provides assurances from the importer that the technology will not be misused, transferred or re-exported in violation of the EAR. The form is also required for certain reexport authorizations specified in § 748.12(b) of the EAR.

II. Method of Collection

Submitted electronically or by paper.

III. Data

OMB Control Number: 0694–0021.

Form Number(s): BIS–711.

Type of Review: Regular submission. Extension of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 414.

Estimated Time per Response: 16 minutes.

Estimated Total Annual Burden Hours: 110.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Voluntary.

Legal Authority: EAR § 748.11.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2024–05911 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Artificial Intelligence Advisory Committee; Law Enforcement Subcommittee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the National Artificial Intelligence Advisory Committee Law Enforcement Subcommittee (NAIAC LE or Subcommittee) will hold an open meeting via web conference on Friday, April 5, 2024, from 3 p.m.–5 p.m. Eastern Time. The primary purpose of this meeting is for the Subcommittee Members to report the working groups' findings, identify actionable recommendations, and discuss updates on goals and deliverables. The final agenda will be posted on the NIST website at *https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac.*

DATES: The NAIAC LE will meet on Friday, April 5, 2024, from 3 p.m.–5 p.m. Eastern Time.

ADDRESSES: The meeting will be held via webinar. Please note participation instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Cheryl L. Gendron, Designated Federal Officer, Information Technology Laboratory, National Institute of Standards and Technology, Telephone: (301) 975–2785, Email address: *cheryl.gendron@nist.gov.* Please direct any inquiries to the committee at *naiac@nist.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the NAIAC LE will meet as set forth in the **DATES** section of this notice. The meeting will be open to the public.

The NAIAC LE is authorized by Section 5104 of the National Artificial Intelligence Initiative Act of 2020 (Pub. L. 116–283). The Subcommittee advises the President, through the Committee, on matters associated with the development of artificial intelligence related to law enforcement. Additional information on the NAIAC LE is available at *ai.gov/naiac/.*

The primary purpose of this meeting is for the Subcommittee Members to report the working groups' findings, identify actionable recommendations, and discuss updates on goals and deliverables.

The agenda may change to accommodate NAIAC LE business. The final agenda will be posted on the NIST website at *https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac.*

Comments: Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Subcommittee's agenda for this meeting are invited to submit comments in advance of the meeting. Please note that all comments submitted via email will be treated as public documents and will be made available for public inspection. All comments must be submitted via email with the subject line April 5, 2024, NAIAC–LE Public Meeting'' to *naiac@nist.gov* by 5 p.m. Eastern Time, April 4, 2024. NIST will not accept comments accompanied by a request that part or all of the comment be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals.

Virtual Meeting Registration Instructions: The meeting will be broadcast via web conference. Registration is required to view the web conference. Instructions on how to

register will be made available at *https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac.* Registration will remain open until the conclusion of the meeting.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024–06168 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Artificial Intelligence Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the National Artificial Intelligence Advisory Committee (NAIAC or Committee) will meet via web conference on Tuesday, April 16, 2024, from 2 p.m.–4:30 p.m. Eastern Time. The primary purpose of this meeting is to have invited guests brief the full Committee on topics of interest to the NAIAC's working groups. The briefings are from outside subject matter experts to the full Committee from areas such as industry, nonprofit organizations, the scientific community, the defense and law enforcement communities, and other appropriate organizations. The final agenda will be posted on the NIST website at *https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac.*

DATES: The NAIAC will meet on Tuesday, April 16, 2024, from 2 p.m.–4:30 p.m. Eastern Time.

ADDRESSES: The meeting will be held via webinar. Please note participation instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Cheryl L. Gendron, Designated Federal Officer, Information Technology Laboratory, National Institute of Standards and Technology, Telephone: (301) 975–2785, Email address: *cheryl.gendron@nist.gov.* Please direct any inquiries to the committee at *naiac@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the NAIAC will meet virtually as set forth in the **DATES** section of this notice. The meeting will be open to the public.

The NAIAC is authorized by Section 5104 of the National Artificial Intelligence Initiative Act of 2020 (Pub. L. 116–283), in accordance with the provisions of the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. 1001 *et seq.* The Committee advises the President and the National Artificial Intelligence Initiative Office on matters related to the National Artificial Intelligence Initiative. Additional information on the NAIAC is available at *ai.gov/naiac/.*

The primary purpose of this meeting is to have informational briefings organized by specific working groups of the NAIAC to the full Committee.

- The AI Futures—Preparedness, Opportunities, and Competitiveness Working Group of the NAIAC will host the ''AI for Science panel'': This panel aims to solicit expert perspectives on leveraging artificial intelligence to advance scientific discovery across domains. It seeks to bring together academia and industry stakeholders to explore AI's role in overcoming complex obstacles and driving innovation.
- The AI in Work and the Workforce Working Group of the NAIAC will host the ''AI Transition for Workers panel'': This panel will explore the building blocks of a just AI transition for American workers, ensuring people and communities have the information, networks, training, and skills, support meeting essential needs, and access to dignified and quality work to make ends meet and get ahead in an economy increasingly shaped by AI.

The agenda items may change to accommodate NAIAC business. The final agenda will be posted on the NIST website at *https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac.*

Comments: Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to submit comments in advance of the conference. Please note that all comments submitted via email will be treated as public documents and will be made available for public inspection. All comments must be submitted via email with the subject line ''April 16, 2024, NAIAC Public Meeting'' to *naiac@nist.gov* by 5 p.m. Eastern Time, April 15, 2024. NIST will not accept comments accompanied by a request that part or all of the comment be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals.

Virtual Meeting Registration Instructions: The meeting will be broadcast via web conference. Registration is required to view the web conference. Instructions on how to register will be made available at *https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac.* Registration will remain open until the conclusion of the meeting.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024–06173 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Large Pelagic Fishing Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite 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. Public comments were previously requested via the **Federal Register** on November 6, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Large Pelagic Fishing Survey.

OMB Control Number: 0648–0380.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 16,147.

Average Hours per Response: 11 minutes for a telephone interview; 5 minutes for a dockside interview; 1½ minutes to respond to a follow-up validation call for dockside interviews; 1 minute for a biological sampling of catch.

Total Annual Burden Hours: 3,638.

Needs and Uses: This request is for extension of a currently approved information collection. The National Marine Fisheries Service (NMFS) is responsible for monitoring and managing United States (U.S.) marine fisheries resources. Collection of information regarding fishing for large pelagic species (tunas, billfishes, swordfish, and sharks) is necessary to fulfill the following statutory requirements: Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*), the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and to meet administrative requirements of the National Marine Fisheries Service (NMFS) Marine Recreational Fishery Policy implemented to comply with Executive Order 12962 on Recreational Fisheries.

The Atlantic Tunas Convention Act at 16 U.S.C. 971d(c)(3)(I) provides the Secretary of Commerce the authority to ''require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of catch of a regulated species''. Section 303(a) of the Magnuson-Stevens Act specifies data and analyses to be included in Fishery Management Plans (FMPs), as well as pertinent data, which shall be submitted to the Secretary of Commerce under the plan. Recommendation One of the NMFS Marine Recreational Fishery (MRF) Policy focuses on developing ''a comprehensive data acquisition and analysis system (participation, catch, effort and socio-economic data) on a regular, continuing basis'' in support of the Executive Order 12962 requirement to assess the implementation and evaluate achievements of the ''Recreational Fishery Resources Conservation Plan.''

Because highly migratory species are only sought on a relatively small proportion of the total marine recreational angler fishing trips made, the fishing effort directed at such species, and the resulting angler catches are generally not estimated very precisely or accurately by general (all species) recreational surveys. Therefore, the Large Pelagics Survey (LPS) was designed as a specialized survey that would focus specifically on the recreational fishery directed at large pelagic, also called highly migratory, species. This specialization has allowed higher levels of sampling needed to provide more precise and accurate estimates of pelagic fishing effort and catches of large pelagic species.

The LPS consists of two complementary surveys: a directory frame telephone survey of tuna and/or HMS permit holders to obtain fishing effort information (Large Pelagic Telephone Survey or LPTS), and a dockside survey which collects catch information and also estimates the proportion of vessels fishing for large pelagics that are not on the telephone frame (Large Pelagic Intercept Survey or LPIS). Results from the two survey components are combined to estimate total landings of Highly Migratory Species. In addition, we are requesting approval to continue to implement the Large Pelagic Biological Survey (LPBS) to collect supplemental weight and length measurements of landed fish through independent dockside sampling, as well as LPIS Validation telephone calls to validate LPIS data. Implementation of certain components will depend on fiscal year funding and NMFS priorities.

NMFS, regional fishery management councils, interstate marine fisheries commissions, and state fishery agencies use the data in developing, implementing and monitoring fishery management programs. This collection has been the key source of data used to monitor recreational quotas for the harvest of bluefin tuna in the Mid-Atlantic and southern New England regions. Catch distributions, harvested size distributions, and other indices obtained in this data collection have formed the basis of fishery management plans and used in stock assessments for Atlantic highly migratory species such as tunas, billfish, swordfish and sharks.

The National Marine Fisheries Service (NMFS) is responsible for monitoring and managing United States (U.S.) marine fisheries resources. Collection of information regarding fishing for large pelagic species (tunas, billfishes, swordfish, and sharks) is necessary to fulfill the following statutory requirements: Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*), the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and to meet administrative requirements of the National Marine Fisheries Service (NMFS) Marine Recreational Fishery Policy implemented to comply with Executive Order 12962 on Recreational Fisheries.

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Because highly migratory species are only sought on a relatively small proportion of the total marine recreational angler fishing trips made, the fishing effort directed at such species, and the resulting angler catches are generally not estimated very precisely or accurately by general (all species) recreational surveys. Therefore, the Large Pelagics Survey (LPS) was designed as a specialized survey that would focus specifically on the recreational fishery directed at large pelagic, also called highly migratory, species. This specialization has allowed higher levels of sampling needed to provide more precise and accurate estimates of pelagic fishing effort and catches of large pelagic species.

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NMFS, regional fishery management councils, interstate marine fisheries commissions, and state fishery agencies use the data in developing, implementing and monitoring fishery management programs. This collection has been the key source of data used to monitor recreational quotas for the harvest of bluefin tuna in the Mid-Atlantic and southern New England

regions. Catch distributions, harvested size distributions, and other indices obtained in this data collection have formed the basis of fishery management plans and used in stock assessments for Atlantic highly migratory species such as tunas, billfish, swordfish and sharks.

Affected Public: Individuals or households; business or other for-profit organizations.

Frequency: Annually, weekly or on occasion.

Respondent's Obligation: Mandatory.

Legal Authority: Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act.

This information collection request may be viewed at *www.reginfo.gov*. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0648–0380.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–06203 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Request for Information; Data for Marine Spatial Studies in Virginia, North Carolina, and South Carolina

AGENCY: National Centers for Coastal Ocean Science, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; request for information.

SUMMARY: NOAA's National Ocean Service (NOS) National Centers for Coastal Ocean Science (NCCOS), hereafter NOAA, in partnership with the Bureau of Ocean Energy Management (BOEM), is working to build spatial planning capacity in the Southeast United States Region (Southeast U.S.). Through this notice, NOAA is seeking public input to identify coastal and marine spatial data or other critical information to inform marine spatial analyses in Virginia, North Carolina, and South Carolina. The input we receive from the data development workshop meeting, as well as the responses to the items listed in the **SUPPLEMENTARY INFORMATION** section of this document, will be used to inform potential coastal and ocean development activities in the Southeast U.S., such as renewable energy development.

DATES: Interested persons are invited to provide input in response to this notice through April 30, 2024. Late-filed input will be considered to the extent practicable. Oral input will be accepted during a public meeting to be held in Beaufort, North Carolina on April 9–10, 2024.

ADDRESSES: Interested persons are invited to provide input using one of the following methods:

- *Electronic Submission:* Submit electronic written public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NOS–2024–0090908 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).
- *Oral submission:* NOAA will accept oral input at a data development workshop. The meeting will be held at the NOAA Beaufort Laboratory in Beaufort, North Carolina on Tuesday, April 9, 2024 from 8:30 a.m. to 5 p.m. eastern time (ET) and Wednesday, April 10, 2024 from 8:30 a.m. to 3 p.m. ET. There will be a registration window from 8:30 a.m. to 9 a.m. ET each day before the start of the meeting. Advanced registration is required for the meeting by completing the registration form at *https://docs.google.com/forms/d/e/1FAIpQLSc5Z5zv0jmM-g5AF-WOAxga6lt0Mc2fmK9aYAvnuwI79EktlQ/viewform?usp=sf_link* or by providing an RSVP to Michelle Hobgood at *michelle.hobgood@noaa.gov.* The registration deadline is Friday, April 5, 2024.

Reports of meeting results will also be published and made available to the public in the weeks following the meeting. If you are unable to provide electronic written comments or participate in the meeting, please contact Michelle Hobgood at *michelle.hobgood@noaa.gov* or 980–622–7642 for alternative submission methods.

FOR FURTHER INFORMATION CONTACT: James Morris, NOAA NCCOS, at *james.morris@noaa.gov* or 252–666–7433.

SUPPLEMENTARY INFORMATION:

I. Background

NOAA is an agency of the United States Federal Government that works to conserve and manage coastal and marine ecosystems and resources. NOAA works to make fisheries sustainable and productive, provide safe seafood to consumers, conserve threatened and endangered species and other protected resources, and maintain healthy ecosystems. NOAA has jurisdiction and responsibility for its trust marine resources in the Southeast U.S. as well as significant interest in supporting the resilience of coastal and marine-dependent communities and promoting equity and environmental justice. For these reasons, it is important for NOAA to invest in research that informs marine spatial studies in the Southeast U.S. region, including socioeconomic research that ensures meaningful participation of local communities and supports equitable processes for planning and siting of new and existing marine industries and conservation areas.

NOAA has been engaged with the Bureau of Ocean Energy Management to support siting and environmental review for offshore wind energy areas in U.S. Federal waters (*https://www.boem.gov/renewable-energy*) to ensure protection of trust resources in any offshore development activities.

II. Purpose of This Request for Information

The purpose of this notice is to promote data development to inform marine spatial studies in Virginia, North Carolina, and South Carolina, with an emphasis on data needs for offshore wind energy. In addition to input received from the public through the electronic and oral submissions, NOAA aims to inform the public about its coastal and ocean planning processes and capabilities, discuss the current data available for each ocean sector (*e.g.,* national security, fisheries, industry, natural resources, cultural resources),

and gather ideas for other data sources. NOAA hopes to come out of the meetings with a strengthened relationship with the public and a list of best available data and data gaps.

III. Specific Information Requested To Inform Marine Spatial Studies in Virginia, North Carolina, and South Carolina

NOAA seeks written public input to inform marine spatial studies in the Southeast U.S. NOAA is particularly interested in receiving input concerning the items listed below. Responses to this notice are voluntary, and respondents need not reply to items listed. When providing input, please specify if you are providing general feedback on marine spatial studies and/or if you are responding to one of the specific item number(s) below:

1. Specific datasets related to ocean sectors, natural resources, and/or human activities you recommend NOAA use in marine spatial studies.
2. Major concerns you have related to use of any specific datasets that may be used in marine spatial studies.
3. Major concerns you have related to gaps in scientific knowledge or data that could impact marine spatial planning efforts.
4. Specific data or information you recommend NOAA or other partners collect, if it is not currently available or has not been previously collected.
5. Ways in which NOAA can better engage and collaborate with the public and local communities to promote economic, social, and ecological resilience as well as protect trust resources.

Sean Corson,

Director, National Centers for Coastal Ocean Science, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–06232 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Pacific Islands Region Vessel and Gear Identification Requirements

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite 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. Public comments were previously requested via the **Federal Register** on December 19, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Pacific Islands Region Vessel and Gear Identification Requirement.

OMB Control Number: 0648–0360.

Form Number(s): None.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 417.

Average Hours per Response: Gear marking requirements approximately 1 minute. Vessel ID requirements between 20 minutes and 75 hours, depending on requirement.

Total Annual Burden Hours: 1,117.

Needs and Uses: Regulations at 50 CFR 665.16 require that all U.S. vessels with Federal permits fishing for western Pacific fishery management unit species display identification markings on the vessel. Each Vessel registered for use with a permit issued under Subparts B through E and Subparts G through I of 50 CFR 665, must have the vessel's official number displayed on both sides of the deckhouse or hull, and on an appropriate weather deck. Regulations at 50 CFR 300.35 require that each vessel fishing under the South Pacific Tuna Treaty must display its international radio call sign on the hull, the deck, and on the sides of auxiliary equipment, such as skiffs and helicopters. Vessels fishing for highly migratory species in the Western and Central Pacific Fisheries Commission (WCPFC) Convention Area and in international waters must comply with the regulations at 50 CFR 300.217 requiring the display of the vessel's international radio call sign on both sides of the deckhouse or hull, and on an appropriate weather deck, unless specifically exempted. In each case, the numbers must be a specific size and in specified locations. The display of the identifying numbers aids in fishery law enforcement.

The regulations at 50 CFR 665.128, 665.228, 665.428, 665.628, and 665.804 require that certain fishing gear must be marked. In the pelagic longline fisheries, the vessel operator must ensure that the official number of the vessel is affixed to every longline buoy and float. In the coral reef ecosystem fisheries, the vessel number must be affixed to all fish and crab traps. The marking of gear links fishing or other activity to the vessel, aids law enforcement, and is valuable in actions concerning the damage to or loss of gear, and civil proceedings.

Affected Public: For-profit Businesses and Individuals.

Frequency: As required.

Respondent's Obligation: Mandatory.

Legal Authority: 50 CFR 300, 50 CFR 665.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 *https://www.reginfo.gov/public/do/PRAMain* for the particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0360.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–06204 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Solicitation for Members of the NOAA Science Advisory Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Oceanic and Atmospheric Research (OAR), Department of Commerce (DOC).

ACTION: Notice of solicitation for members of the NOAA Science Advisory Board.

SUMMARY: NOAA is soliciting nominations for members of the NOAA Science Advisory Board (SAB). The SAB is the only Federal Advisory Committee with the responsibility to advise the Under Secretary of Commerce for Oceans, Atmosphere, and NOAA Administrator on long- and short-range strategies for research, education, and application of science to resource management and

environmental assessment and prediction. The SAB consists of approximately twenty members reflecting the full breadth of NOAA's areas of responsibility and assists NOAA in maintaining a complete and accurate understanding of scientific issues critical to the agency's missions.

DATES: Nominations should be sent to the web address specified below and must be received by May 9, 2024.

ADDRESSES: Applications should be submitted electronically to *noaa.scienceadvisoryboard@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Casey Stewart, Executive Director, Science Advisory Board, NOAA, Rm. 11360, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 240–653–8297, Email: *casey.stewart@noaa.gov*); or visit the NOAA SAB website at *http://www.sab.noaa.gov.*

SUPPLEMENTARY INFORMATION: The NOAA Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management. At this time, individuals are sought with expertise in artificial intelligence and machine learning; environmental remote sensing; social and behavioral sciences; storytelling. Individuals with expertise in other NOAA mission areas are also welcome to apply. NOAA is also interested in expanding the diversity of viewpoints represented on the SAB. The agency welcomes scientists in the listed areas of expertise and other relevant ones who come from diverse ethnic backgrounds and races, Native and Tribal communities, and gender as well as those who are differently abled.

Composition and Points of View: The Board will consist of approximately twenty members, including a Chair, designated by the Under Secretary in accordance with FACA requirements. Members will be appointed for three-year terms, renewable once, and serve at the discretion of the Under Secretary. Members will be appointed as special government employees (SGEs) and will be subject to the ethical standards applicable to SGEs. Members are reimbursed for actual and reasonable travel and per diem expenses incurred in performing such duties but will not be reimbursed for their time. As a Federal Advisory Committee, the Board's membership is required to be balanced in terms of viewpoints represented and the functions to be performed as well as the interests of geographic regions of the country and the diverse sectors of U.S. society. The SAB meets in person three times each year, exclusive of teleconferences or subcommittee, task force, and working group meetings. Board members must be willing to serve as liaisons to SAB working groups and/or participate in periodic reviews of the NOAA Cooperative Institutes and overarching reviews of NOAA's research enterprise.

Nominations: Interested persons may nominate themselves or third parties.

Applications: An application is required to be considered for Board membership, regardless of whether a person is nominated by a third party or self-nominated. The application package must include: (1) the nominee's full name, title, institutional affiliation, and contact information, including mailing address; (2) the nominee's area(s) of expertise; (3) a short description of his/her qualifications relative to the kinds of advice being solicited by NOAA in this Notice; and (4) a current resume (maximum length four [4] pages).

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–05733 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV197]

Space Weather Advisory Group Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Space Weather Advisory Group (SWAG) will meet for a half day on April 12, 2024.

DATES: The meeting is scheduled as follows: April 12, 2024 from 10 a.m.–2 p.m. eastern daylight saving time (EDT).

ADDRESSES: The public meeting will be a virtual event. For details on how to connect to the webinar or to submit comments, please visit *https://www.weather.gov/swag* or contact Amy Macpherson, National Weather Service; telephone: 816–287–1344; email: *amy.macpherson@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Macpherson, National Weather Service, NOAA, 7220 NW 101st Terrace, Kansas City, MO 64153; 816–287–1344 or *amy.macpherson@noaa.gov;* or visit the SWAG website: *https://www.weather.gov/swag.*

SUPPLEMENTARY INFORMATION: Pursuant to the Promoting Research and Observations of Space Weather to Improve the Forecasting of Tomorrow (PROSWIFT) Act, 51 U.S.C. 60601 *et seq.,* the Administrator of NOAA and the National Science and Technology Council's Space Weather Operations, Research, and Mitigation (SWORM) Subcommittee established the SWAG on April 21, 2021. The SWAG is the only Federal Advisory SWAG that advises and informs the interest and work of the SWORM. The SWAG is to receive advice from the academic community, the commercial space weather sector, and nongovernmental space weather end users to carry out the responsibilities of the SWAG set forth in the PROSWIFT Act, 51 U.S.C. 60601 *et seq.*

The SWAG is directed to advise the SWORM on the following: facilitating advances in the space weather enterprise of the United States; improving the ability of the United States to prepare for, mitigate, respond to, and recover from space weather phenomena; enabling the coordination and facilitation of research to operations and operations to research, as described in 51 U.S.C 60604(d); and developing and implementing the integrated strategy under 51 U.S.C. 60601(c), including subsequent updates and reevaluations. The SWAG shall also conduct a comprehensive survey of the needs of users of space weather products to identify the space weather research, observations, forecasting, prediction, and modeling advances required to improve space weather products, as required by 51 U.S.C. 60601(d)(3).

Matters To Be Considered

The meeting will be open to the public. During the meeting, the SWAG will discuss the PROSWIFT Act, 51 U.S.C. 60601 *et seq.,* directed duties of the SWAG including the required 51 U.S.C. 60601(d)(3) user survey. The full agenda and meeting materials will be published on the SWAG website: *https://www.weather.gov/swag.*

Additional Information and Public Comments

The meeting will be held over one half day and will be conducted in a virtual manner (for meeting details see **ADDRESSES**). Please register for the meeting through the website: *https://www.weather.gov/swag.*

This event is accessible to individuals with disabilities. For all other special accommodation requests, please contact *amy.macpherson@noaa.gov.* This webinar is a NOAA public meeting and will be recorded and transcribed. If you have a public comment, you acknowledge you will be recorded and are aware you can opt out of the meeting. Participation in the meeting constitutes consent to the recording. Both the meeting minutes and presentations will be posted to the SWAG website *https://www.weather.gov/swag.* The agenda, speakers and times are subject to change. For updates, please check the SWAG website *https://www.weather.gov/swag.*

Public comments directed to the SWAG members and SWAG related topics are encouraged. For other written public comments, please email *amy.macpherson@noaa.gov* by March 22, 2024. Written comments received after this date will be distributed to the SWAG but may not be reviewed prior to the meeting date. As time allows, public comments will be read into the public record during the meeting. Advance comments will be collated and posted to the meeting website.

Dated: March 19, 2024.

Michael Farrar,

Director, National Centers for Environmental Prediction, National Weather Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–06236 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–KE–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Friday, March 22, 2024–2 p.m.

PLACE: Meeting will be held remotely.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: *Briefing Matter:* Closed meeting topic.

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: March 20, 2024.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2024–06353 Filed 3–21–24; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0214]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of Full-Service Community Schools

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 24, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Erica Johnson, (202) 453–7381.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of Full-Service Community Schools.

OMB Control Number: 1850–NEW.

Type of Review: New ICR.

Respondents/Affected Public: Private sector; State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 566.

Total Estimated Number of Annual Burden Hours: 511.

Abstract: The Full-Service Community Schools program, funded through title IV of the Elementary and Secondary Education Act, seeks to improve student outcomes by leveraging partnerships to help schools provide coordinated and integrated wraparound services to students and families, particularly in high-poverty schools. This study will be the first implementation evaluation of the Full-Service Community Schools program.

This Information Collection Request (ICR) follows the related June 2023 ICR that OMB approved (1850–0981) to conduct an initial survey of FY 2022 Full-Service Community Schools grantees. This ICR seeks approval to conduct additional rounds of data collection focused on helping policymakers and the community schools field better understand how program implementation is playing out. Included in these data collection are a follow-up survey of the FY 2022 grantees, a baseline and interim survey of the newly-awarded FY 2023 grantees and their partner schools, and one round of administrative data from states and districts that oversee FY 2023 partner schools.

Dated: March 20, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–06211 Filed 3–22–24; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings: Standards Board 2024 Annual Meeting

AGENCY: Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission Standards Board 2024 Annual Meeting.

DATES: Wednesday, April 17, 2024 9:00 a.m.–4:30 p.m. Central and Thursday, April 18, 2024 9:00 a.m.–11:45 a.m. Central.

ADDRESSES: The Fontaine hotel, 901 W 48th Place, Kansas City, Missouri 64112.

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct an annual meeting of the EAC Standards Board to conduct regular business, discuss EAC updates and upcoming programs, and discuss other relevant election topics.

Background: HAVA designates a 110-member Standards Board to assist EAC in carrying out its mandates under the law. The board consists of 55 state election officials selected by their respective chief state election official, and 55 local election officials selected through a process supervised by the chief state election official.

Agenda: The U.S. Election Assistance Commission (EAC) Standards Board will hold their 2024 Annual Meeting to conduct regular business and discuss communications, lessons from the presidential primaries, the impact of artificial intelligence on elections and mitigation tactics, and looking forward to the general election. This meeting will include a question and answer discussion between board members and EAC staff.

Board members will also review FACA Board membership guidelines and policies with EAC Acting General Counsel and receive a general update about the EAC programing.

The EAC will only accept written comments and questions from members of the public. If you would like to participate, please email *clearinghouse@eac.gov* with your full name and question or comment no later than 5:00 p.m. Central Time on April 17, 2024.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov/events/2024/04/17/2024-eac-standards-board-annual-meeting.*

Status: This meeting will be open to the public.

Camden Kelliher,

Acting General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2024–06308 Filed 3–21–24; 11:15 am]

BILLING CODE 4810–71–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings: Board of Advisors 2024 Annual Meeting

AGENCY: Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission Board of Advisors 2024 Annual Meeting.

DATES: Thursday, April 18, 2024 8:30 a.m.–4:00 p.m. Central and Friday, April 19, 2024 9:00 a.m.–11:45 a.m. Central.

ADDRESSES: The Fontaine Hotel, 901 W 48th Place, Kansas City, Missouri 64112.

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct an annual meeting of the EAC Board of Advisors to conduct regular business, discuss EAC updates and upcoming programs, and other relevant election topics.

Background: HAVA designates the Board of Advisors to assist EAC in carrying out its mandates under the law. The board consists of 35 members composed of representatives from specified associations, organizations, federal departments, and members of Congress.

Agenda: The U.S. Election Assistance Commission (EAC) Board of Advisors will hold their 2024 Annual Meeting primarily to conduct regular business, learn about EAC agency developments, ethical standards for election administration, discuss elections administration in 2024, and more. This meeting will include question and answer discussions between board members and EAC staff. The Board will also vote to elect members to Executive Officer positions and consider amendments to the governing Bylaws.

The EAC will only accept written comments and questions from members of the public. If you would like to participate, please email *clearinghouse@eac.gov* with your full name and question or comment no later than 5:00 p.m. Central Time on April 17, 2024.

The full agenda will be posted in advance on the EAC website: *www.eac.gov/events/2024/04/18/2024-eac-board-advisors-annual-meeting.*

Status: This meeting will be open to the public.

Camden Kelliher,

Acting General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2024–06310 Filed 3–21–24; 11:15 am]

BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–472–A]

Application for Renewal of Authorization To Export Electric Energy; Luminant Energy Company LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Luminant Energy Company LLC (the Applicant or LUME) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 24, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *Electricity.Exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On July 18, 2019, DOE issued Order No. EA–472 to LUME to transmit electric energy from the United States to Canada as a power marketer for a period of five years. On February 12, 2024,

LUME filed an application with DOE (Application or App.) for renewal of their export authority for an additional five-year term. App. at 1.

According to its application, LUME is a Texas limited liability company and indirect, wholly-owned subsidiary of Vistra Corp. (Vistra). *Id.* at 2. LUME states it manages the optimization, marketing, and deployment of approximately 18,000 megawatts (MW) of generation capacity located within the Electric Reliability Council of Texas (ERCOT) market. *Id.* LUME represents that it also manages power purchase agreements and meets the energy supply requirements of various competitive retail energy service providers within ERCOT, is certified as a Qualified Scheduling Entity with ERCOT, and is registered with the Public Utilities Commission of Texas as a wholesale power marketer. *Id.* The Applicant is also authorized to sell wholesale electric energy, capacity, and ancillary services outside of ERCOT at market-based rates pursuant to authority granted by the Federal Energy Regulatory Commission (FERC). *Id.*

LUME's parent company, Vistra, ''operates a generation portfolio of approximately 37,000 MWs of natural gas, nuclear, coal, battery, and solar facilities in 20 states and the District of Columbia and in six of the seven competitive markets in the United States.'' App. at 2. LUME states that neither it nor its affiliates ''directly or indirectly own or control any transmission facilities other than those limited and discrete facilities interconnecting its electric generation facilities to the grid.'' *Id.* at 3. LUME further states that neither it nor any of its affiliates has a franchised service area. *Id.* Further, LUME notes its proposed exports would be surplus electricity and that market mechanisms and reliability oversite protect against exports that would jeopardize domestic sufficiency of supply. See *id.* at 5 n.13. LUME also asserts that because it will schedule its exports from the U.S. in compliance with all applicable criteria, standards, and guidelines, its proposed exports will not impede reliability. *Id.* at 6.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov*. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning BETM's Application should be clearly marked with GDO Docket No. EA–472–A. Additional copies are to be provided directly to Jessica Miller and Heather Moreno, VISTRA CORP., 1005 Congress Ave., Suite 750, Austin, TX 78701, *jessica.miller@vistracorp.com, heather.moreno@vistracorp.com, VistraFERC@vistracorp.com,* and Stephen J. Hug and Ben N. Reiter, AKIN GUMP STRAUSS HAUER & FELD LLP, 2001 K Street NW, Washington, DC 20006, *shug@akingump.com, breiter@akingump.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications-0* or by emailing *Electricity.Exports@hq.doe.gov*.

Signing Authority: This document of the Department of Energy was signed on March 18, 20124, by Maria Robinson, Director, Grid Deployment Office, 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 March 20, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–06202 Filed 3–22–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–471–A]

Application for Renewal of Authorization To Export Electric Energy; Luminant Energy Company LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Luminant Energy Company LLC (the Applicant or LUME) has applied for renewed authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 24, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *Electricity.Exports@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On July 18, 2019, DOE issued Order No. EA–471 authorizing LUME to transmit electric energy from the United States to Mexico as a power marketer. On February 12, 2024, LUME filed an application with DOE (Application or App.) for renewal of their export authority for an additional five-year term. App. at 1.

According to its application, LUME is a Texas limited liability company and indirect, wholly-owned subsidiary of Vistra Corp. (Vistra). *Id.* at 2. LUME states it manages the optimization, marketing, and deployment of

approximately 18,000 megawatts (MW) of generation capacity located within the Electric Reliability Council of Texas (ERCOT) market. *Id.* LUME represents that it also manages power purchase agreements and meets the energy supply requirements of various competitive retail energy service providers within ERCOT, is certified as a Qualified Scheduling Entity with ERCOT, and is registered with the Public Utilities Commission of Texas as a wholesale power marketer. *Id.* The Applicant is also authorized to sell wholesale electric energy, capacity, and ancillary services outside of ERCOT at market-based rates pursuant to authority granted by the Federal Energy Regulatory Commission (FERC). *Id.*

Vistra, LUME's parent company, ''operates a generation portfolio of approximately 37,000 MWs of natural gas, nuclear, coal, battery, and solar facilities in 20 states and the District of Columbia and in six of the seven competitive markets in the United States.'' App. at 2. LUME states that neither it nor its affiliates ''directly or indirectly own or control any transmission facilities other than those limited and discrete facilities interconnecting its electric generation facilities to the grid.'' *Id.* at 3. LUME further states that neither it nor any of its affiliates has a franchised service area. *Id.* Further, LUME notes its proposed exports would be surplus electricity and that market mechanisms and reliability oversite protect against exports that would jeopardize domestic sufficiency of supply. *See id.* at 5 n.13. LUME also asserts that because it will schedule its exports from the U.S. in compliance with all applicable criteria, standards, and guidelines, its proposed exports will not impede reliability. *Id.* at 6.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov*. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning LUME's Application should be clearly marked with GDO Docket No. EA–471–A. Additional copies are to be provided directly to Jessica Miller and Heather Moreno, VISTRA CORP., 1005 Congress Ave., Suite 750, Austin TX 78701, *jessica.miller@vistracorp.com, heather.moreno@vistracorp.com, VistraFERC@vistracorp.com,* and Stephen J. Hug and Ben N. Reiter, AKIN GUMP STRAUSS HAUER & FELD LLP, 2001 K Street NW, Washington, DC 20006, *shug@akingump.com, breiter@akingump.com*.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications-0* or by emailing *Electricity.Exports@hq.doe.gov*.

Signing Authority: This document of the Department of Energy was signed on March 18, 2024, by Maria Robinson, Director, Grid Deployment Office, 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 March 20, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–06205 Filed 3–22–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

High Energy Physics Advisory Panel

AGENCY: Office of Science, Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a hybrid meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Thursday, May 9, 2024; 9 a.m. to 5 p.m. EDT.

Friday, May 10, 2024; 9 a.m. to 3 p.m. EDT.

ADDRESSES: This meeting is open to the public. This meeting will be held at the Hilton Rockville, 1750 Rockville Pike, Rockville, Maryland 20852–1699. Participation through ZOOM will also be available. Information to participate can be found on the website closer to the meeting date at *https://science.osti.gov/hep/hepap/meetings/.*

FOR FURTHER INFORMATION CONTACT: John Kogut, High Energy Physics Advisory Panel (HEPAP); U.S. Department of Energy; Office of Science; SC–35/ Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–1298; Email: *John.Kogut@science.doe.gov*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Committee is to provide advice and recommendations to the Department of Energy, Office of Science (SC) and the National Science Foundation, Assistant Director, Mathematical & Physical Sciences Directorate on the national high energy physics program.

Tentative Agenda

- Update from DOE—Regina Rameika
- Update from NSF—Denise Caldwell/ Saul Gonzalez
- Presentation of the HEP implementation plan of the 2023 P5 Report—Regina Rameika
- Presentation of the Facilities for the Next Decade Report—Natalie Roe
- Discussion and voting on the Facilities for the Next Decade Report
- Presentation of the Report of the COV on the Facilities Division of HEP
- Discussion and voting of the COV Report

Public Participation: The meeting is open to the public. A webcast of this meeting will be available. Please check *https://science.osti.gov/hep/hepap/meetings/* for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, (301) 903–1298 or by email at

John.Kogut@science.doe.gov. You must make your request for an oral statement at least five business days before the meeting. Reasonable provisions will be made to include the scheduled oral statements on the agenda. If you have any questions or need a reasonable accommodation under the Americans with Disabilities Act for this event, please send your request to John Kogut at *john.kogut@science.doe.gov* two weeks but no later than 48 hours, prior to the event. Closed captions will be enabled. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the High Energy Physics Advisory Panel website at *https://science.osti.gov/hep/hepap/meetings/.*

Signing Authority: This document of the Department of Energy was signed on March 19, 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 March 20, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–06212 Filed 3–22–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–467–A]

Application for Renewal of Authorization To Export Electric Energy; Citigroup Commodities Canada ULC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Citigroup Commodities Canada ULC (Applicant or CCCU) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 24, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *Electricity.Exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On May 10, 2019, DOE issued Order No. EA–467 to CCCU to transmit electric energy from the United States to Canada as a power marketer for a period of five years. On February 21, 2024, CCCU filed an application with DOE (Application or App.) for renewal of its export authority for a five-year term. App. at 1.

According to the Application, CCCU is an Alberta, Canada corporation that is an indirect wholly owned subsidiary of Citigroup Inc. (''Citigroup''). *Id.* at 1–2. CCCU represents that through Citigroup, CCCU is affiliated with Citigroup Energy Inc., which is authorized by FERC to sell energy, capacity, and ancillary services at market-based rates. *Id.* at 2 & n.4. CCCU states that neither it nor its affiliates own or operate any electric facilities, nor do they own or controls interests in transmission or distribution facilities in the United States or Canada. *Id.* at 2. The Applicant represents that the electricity it proposes to export will be purchased from third parties pursuant to voluntary agreements and that such electricity would be, by definition, surplus to the needs of the selling entities. *Id.* at 5. CCCU also states it will comply with applicable reliability standards, export limits, and other regulatory requirements and procedures. *See Id.* at 5–7. CCCU thus asserts its export of this electricity will not impair the sufficiency of electric supply within the United States or the regional coordination of electric utility planning or operations. *Id.* at 5, 7.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov.* Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning CCCU's Application should be clearly marked with GDO Docket No. EA–467–A. Additional copies are to be provided directly to Jeffery Gollomp, Citigroup Energy Inc., 2700 Post Oak Blvd., Suite 400, Houston, TX 77056, *Jeffrey.Gollomp@citi.com,* and Margaret H. Claybour, Rock Creek Energy Group, LLP, 1 Thomas Circle NW, Suite 700, Washington, DC 20005, *mclaybour@rockcreekenergygroup.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications-0* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on March 18, 2024, by Maria Robinson, Director, Grid Deployment Office, 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 March 20, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–06206 Filed 3–22–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Call for Nominations for Appointment to the Electricity Advisory Committee

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice; call for nominations.

SUMMARY: This notice constitutes an open call to the public to submit nominations for membership on the Electricity Advisory Committee.

DATES: Nominations will accepted through Friday, April 19, 2024.

ADDRESSES: Office of Electricity, U.S. Department of Energy, 1000 Independence Ave., Room 7H–073, Attn: Ms. Jayne Faith, Designated Federal Officer, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ms. Jayne Faith, Designated Federal Officer, Office of Electricity, U.S. Department of Energy, Washington, DC 20585; Telephone: (202) 586–2983 or Email: *Jayne.Faith@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Department of Energy's Office of Electricity is accepting nominations through April 19, 2024, for appointment to the Electricity Advisory Committee (EAC). The EAC was established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, to provide advice to the U.S. Department of Energy (DOE) in implementing the Energy Policy Act of 2005, executing certain sections of the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure.

The EAC advises the Assistant Secretary for the Office of Electricity on a broad range of issues regarding electricity. The specific duties of the EAC are to:

a. Advise DOE on current and future electric grid resilience, security, reliability, sector interdependence, and policy issues of concern;

b. Periodically review and make recommendations on DOE electric grid-related programs and initiatives, including electricity-related R&D programs and modeling efforts;

c. Identify emerging issues related to production, delivery, end-use, reliability, security, resilience, modeling and electric utility regulation, and make recommendations, if appropriate, concerning DOE policy and initiatives;

d. Make recommendations on how DOE can address the growing interdependence of and risk to critical and defense critical electric infrastructure and other critical sectors such as defense, communications, and transportation;

e. Advise on coordination between DOE, State, Tribal, Territorial, and regional officials and the private sector on matters affecting production, delivery, end-use, reliability, resilience, security, and electric utility regulation;

f. Advise on coordination between Federal, State, Tribal, Territorial, and regional officials and the private sector in the event of supply disruption or other emergencies related to electricity transmission, generation, and distribution; and

g. Make recommendations to the Department on how to best implement programs or policies directly affecting all components of the electric grid and its operations, as appropriate.

Additional information on the Office of Electricity may be found at *https://www.energy.gov/oe/office-electricity* and additional information on the EAC and its activities may be found at *https://www.energy.gov/oe/electricity-advisory-committee-eac.*

Nominees with strong technical knowledge and expertise within the electricity sector are preferred. This includes, but is not limited to expertise in energy reliability, grid edge, utilities, reliability, energy distribution, energy storage, clean energy, cybersecurity, tribal energy, and infrastructure.

The Secretary of Energy appoints members of the committee. Members will be selected to achieve a balanced representation of viewpoints, technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to the electric sector. Per Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government'' (Jan. 20, 2021), other factors to be considered for Committee membership include demographic, professional, and experiential diversity. In addition, the Secretary will strive for the Committee to reflect the principles of inclusion, equity, and diversity, and to ensure that the Committee's recommendations strive for equitable distribution of benefits for all Americans, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. The Secretary also will strive for geographic diversity in the composition of the Committee.

No member may be a registered Federal lobbyist, pursuant to the Lobbying Disclosure Act of 1995 (codified at 2 U.S.C. 1601 *et seq.*).

Terms will be two (2) years from the appointment date. Members are selected in accordance with FACA requirements and serve on an uncompensated, volunteer basis. However, members may be reimbursed in accordance with the Federal Travel Regulations for per diem and travel expenses incurred while attending Committee meetings.

Any person or organization may nominate qualified individuals for membership. Self-nominations are also welcome. Nominations should be submitted electronically to Ms. Jayne Faith, Designated Federal Officer at *Jayne.Faith@hq.doe.gov* or via U.S. Mail at the address above. Nominations must include the nominee's full name, current occupation, position, daytime telephone number, and email address along with a summary of the nominee's qualifications that identifies, how his or her education, training, experience, expertise, or other factors would support the EAC's work. Each nomination should also include a short biography or curriculum vitae.

Signing Authority: This document of the Department of Energy was signed on March 19, 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 March 20, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–06213 Filed 3–22–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC24–10–000]

Commission Information Collection Activities (FERC–725F); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC 725F (Mandatory Reliability Standard for Nuclear Plant Interface Coordination).

DATES: Comments on the collection of information are due May 24, 2024.

ADDRESSES: You may submit your comments (identified by Docket No. IC24–10–000) by one of the following methods:

Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by other delivery methods:

○ Mail via U.S. Postal Service Only: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ All other delivery services: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov*. For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov*.

FOR FURTHER INFORMATION CONTACT: Jean Sonneman may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–6362.

SUPPLEMENTARY INFORMATION:

Title: FERC 725F, Mandatory Reliability Standard for Nuclear Plant Interface Coordination.

OMB Control No.: 1902–0249.

Type of Request: Three-year extension of the FERC–725F information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission requires the information collected by the FERC–725F to implement the statutory provisions of section 215 of the Federal Power Act (FPA) (16 U.S.C. 824o). On August 8, 2005, the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005), was enacted into law.[1] EPAct 2005 added a new section 215 to the FPA, which required a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or the Commission can independently enforce Reliability Standards.[2]

On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.[3] Pursuant to Order No. 672, the Commission certified one organization, North American Electric Reliability Corporation (NERC), as the ERO. The Reliability Standards developed by the ERO and approved by the Commission apply to users, owners and operators of the Bulk-Power System as set forth in each Reliability Standard.

On November 19, 2007, NERC filed its petition for Commission approval of the Nuclear Plant Interface Coordination Reliability Standard, designated NUC–001–1. In Order No. 716, issued October 16, 2008, the Commission approved the standard while also directing certain revisions.[4] Revised Reliability Standard, NUC–001–2, was filed with the Commission by NERC in August 2009 and subsequently approved by the Commission January 21, 2010.[5] On November 4, 2014, in Docket No. RD14–13, the Commission approved revised Reliability Standard NUC–001–3.[6] On February 21, 2020 NERC filed a petition in Docket No. RD20–4 to revise Reliability Standard NUC–001–3 to NUC–0001–4.

The purpose of Reliability Standard NUC–001–4 is to require ''coordination between nuclear plant generator operators and transmission entities for the purpose of ensuring nuclear plant safe operation and shutdown.'' [7] The Nuclear Reliability Standard applies to nuclear plant generator operators (generally nuclear power plant owners and operators, including licensees) and ''transmission entities,'' defined in the Reliability Standard as including a nuclear plant's suppliers of off-site power and related transmission and distribution services. To account for the variations in nuclear plant design and grid interconnection characteristics, the Reliability Standard defines transmission entities as ''all entities that are responsible for providing services related to Nuclear Plant Interface Requirements (NPIRs),'' and lists eleven types of functional entities (heretofore described as ''transmission entities'') that could provide services related to NPIRs.[8]

FERC–725F information collection requirements include establishing and maintaining interface agreements, including record retention requirements. These agreements are not filed with FERC, but with the appropriate entities as established by the Reliability Standard.

Type of Respondent: Nuclear operators, nuclear plants, transmission entities.

Estimate of Annual Burden: [9] The Commission estimates the average

[1] Energy Policy Act of 2005, Public Law 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), 16 U.S.C. 824o.

[2] 16 U.S.C. 824o(e)(3).

[3] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[4] *Mandatory Reliability Standard for Nuclear Plant Interface Coordination,* Order No. 716, 125 FERC ¶ 61,065, at P 189 & n.90 (2008), *order on reh'g,* Order No. 716–A, 126 FERC ¶ 61,122 (2009).

[5] *North American Electric Reliability Corporation,* 130 FERC ¶ 61,051 (2010). When the revised Reliability Standard was approved, the Commission did not go to OMB for approval. It is assumed that the changes made did not substantively affect the information collection and therefore a formal submission to OMB was not needed.

[6] The Letter Order is posted at *https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13675845*.

[7] See Reliability Standard NUC–001–4 at NERC Document_Portrait (Implementation Plan Template).

[8] The list of functional entities consists of transmission operators, transmission owners, transmission planners, transmission service providers, balancing authorities, reliability coordinators, planning authorities, distribution providers, load-serving entities, generator owners, and generator operators.

[9] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. Refer to 5 CFR 1320.3 for additional information.

annual burden and cost [10] for this information collection as follows.

FERC–725F	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hours and cost per response ($) (rounded)	Total annual burden hours and total annual cost ($) (rounded)	Cost per respondent ($) (rounded)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
New or Modifications to Existing Agreements (Reporting and Record Keeping).	54 nuclear plants + 108 transmission entities [11].	2	324	72 hrs.; $6,794.64	23,328 hrs.; $2,201,463	$13,589
Total	.....	.....	324	.....	23,328 hrs.; [12] $2,201,463	.....

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 19, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06259 Filed 3–22–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–528–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 3.19.24 Negotiated Rates—Emera Energy Services, Inc. R–2715–82 to be effective 4/1/2024.

Filed Date: 3/19/24.

Accession Number: 20240319–5048.

Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–529–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 3.19.24 Negotiated Rates—Emera Energy Services, Inc. R–2715–83 to be effective 4/1/2024.

Filed Date: 3/19/24.

Accession Number: 20240319–5049.

Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–530–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 3.19.24 Negotiated Rates—Vitol Inc. R–7495–24 to be effective 4/1/2024.

Filed Date: 3/19/24.

Accession Number: 20240319–5050.

Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–531–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 3.19.24 Negotiated Rates—Vitol Inc. R–7495–25 to be effective 4/1/2024.

Filed Date: 3/19/24.

Accession Number: 20240319–5051.

Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–532–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Yankee Gas to Emera Energy eff 3–19–24 to be effective 3/19/2024.

Filed Date: 3/19/24.

Accession Number: 20240319–5088.

Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–533–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Compliance filing: 2024 Annual Penalty Revenue Crediting Report to be effective N/A.

Filed Date: 3/19/24.

Accession Number: 20240319–5092.

Comment Date: 5 p.m. ET 4/1/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to

[10] The wage and benefit figures are based on the Bureau of Labor Statistics (BLS) data (at *https://www.bls.gov/oes/current/naics2_22.htm*) for May 2023 for Sector 22, Utilities. (The benefits figure is based on BLS data as of May 2023 *http://www.bls.gov/news.release/ecec.nr0.htm*). The estimated hourly cost (for wages plus benefits) for reporting requirements is $94.37/hour, based on the average for an electrical engineer (occupation code 17–2071, $77.29/hour), legal (occupation code 23–0000, $160.24/hour), and office and administrative staff (occupation code 43–0000, $45.59/hour). The estimated cost isa combination of job functions with each covering one-third responsibility. Estimated cost per hour = ($77.29 + $160.24 + $45.59)/3 = $283.12/3 = $94.37/hr.

[11] This figure of 108 transmission entities is based on the assumption that each agreement will be between 1 nuclear plant and 2 transmission entities (54 × 2 = 108). However, there is some double counting in this figure because some transmission entities may be party to multiple agreements with multiple nuclear plants. The double counting does not affect the burden estimate, and the correct number of unique respondents will be reported to OMB.

[12] The reporting requirements have not changed. The decrease in the number of respondents is due to: (a) normal fluctuations in industry (*e.g.,* companies merging and splitting, and coming into and going out of business), and (b) no new agreements being issued due to the lack of new nuclear plants being developed.

contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: March 19, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06260 Filed 3–22–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3442–029]

City of Nashua, New Hampshire; Notice of Waiver Period for Water Quality Certification Application

On January 22, 2024, City of Nashua submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with New Hampshire Department of Environmental Services (New Hampshire DES), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 4.34(b)(5) of the Commission's regulations,[1] we hereby notify the New Hampshire DES of the following:

Date of Receipt of the Certification Request: January 22, 2024

Reasonable Period of Time to Act on the Certification Request: One year (January 22, 2025)

If New Hampshire DES fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: March 19, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06258 Filed 3–22–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–119–004.

Applicants: Gabelli, Mario J., GGCP, Inc., GGCP Holdings, LLC, GAMCO Investors, Inc.

Description: Request for Reauthorization and Extension of Blanket Authorizations Under Section 203 of the Federal Power Act of Mario J. Gabelli, et al.

Filed Date: 3/4/24.

Accession Number: 20240304–5193.

Comment Date: 5 p.m. ET 4/9/24.

Docket Numbers: EC24–60–000.

Applicants: American Electric Power Company, Inc.

Description: Application for Authorization Under Section 203 of the Federal Power Act of American Electric Power Company, Inc.

Filed Date: 3/15/24.

Accession Number: 20240315–5306.

Comment Date: 5 p.m. ET 4/5/24.

Docket Numbers: EC24–61–000.

Applicants: Censtar Energy, Censtar Operating Co., Electricity Maine, Electricity NH, Hiko Energy, Major Energy Electric Serv, Oasis Power, Perigee Energy, Provider Power Mass, Respond Power, Spark Energy, Verde Energy USA, Verde Energy USA NY, Verde En Trading.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Censtar Energy Corp., et al.

Filed Date: 3/18/24.

Accession Number: 20240318–5273.

Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: EC24–62–000.

Applicants: Hecate Energy Johanna Facility LLC, Jicarilla Solar 2 LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Hecate Energy Johanna Facility LLC, et al.

Filed Date: 3/19/24.

Accession Number: 20240319–5090.

Comment Date: 5 p.m. ET 4/9/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–138–000.

Applicants: Franklin Solar LLC.

Description: Franklin Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/18/24.

Accession Number: 20240318–5236.

Comment Date: 5 p.m. ET 4/8/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–88–000.

Applicants: Spruce Power Holding Corporation.

Description: Petition for Declaratory Order of Spruce Power Holding Corporation.

Filed Date: 3/14/24.

Accession Number: 20240314–5176.

Comment Date: 5 p.m. ET 4/15/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–194–007; ER18–195–007; EL23–71–002.

Applicants: East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., Golden Spread Electric Cooperative, Arkansas Electric Cooperative Corporation, American Electric Power Service Corporation, Southwest Power Pool, Inc., American Electric Power Service Corporation, Southwest Power Pool, Inc.

Description: Compliance Filing of AEP Oklahoma Transmission Company, Inc. et al.

Filed Date: 3/18/24.

Accession Number: 20240318–5271.

Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER20–2004–006.

Applicants: Public Service Electric and Gas Company, PJM Interconnection, L.L.C.

Description: Compliance filing: Public Service Electric and Gas Company submits tariff filing per 35: Supplemental Filing re: PSE&G Compliance Filing in ER20–2004 to be effective 8/1/2021.

Filed Date: 3/18/24.

Accession Number: 20240318–5223.

Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–20–003.

Applicants: Cottontail Solar 2, LLC.

Description: Compliance filing: Revised Rate Schedule FERC No. 1 to be effective 12/4/2023.

Filed Date: 3/19/24.

Accession Number: 20240319–5142.

Comment Date: 5 p.m. ET 4/9/24.

Docket Numbers: ER24–1559–000.

Applicants: Puget Sound Energy, Inc.

Description: Compliance filing: Order 2023 Compliance—Annexes A and B to be effective 12/31/9998.

Filed Date: 3/18/24.

Accession Number: 20240318–5228.

Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–1560–000.

Applicants: DTE Electric Company.

Description: § 205(d) Rate Filing: Wholesale Distribution Service Rate Schedules Update to be effective 1/1/2024.

Filed Date: 3/18/24.

Accession Number: 20240318–5235.

Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–1562–000.

Applicants: Otter Tail Power Company.

Description: § 205(d) Rate Filing: Joint Development Agreement Certificate of Concurrence to be effective 2/2/2024.

Filed Date: 3/19/24.

Accession Number: 20240319–5082.

Comment Date: 5 p.m. ET 4/9/24.

Docket Numbers: ER24–1566–000.

Applicants: Happy Jack Windpower, LLC.

[1] 18 CFR 4.34(b)(5).

Description: Compliance filing: Revised Market-Based Rate Tariff to be effective 3/20/2024.

Filed Date: 3/19/24.

Accession Number: 20240319–5110.

Comment Date: 5 p.m. ET 4/9/24.

Docket Numbers: ER24–1567–000.

Applicants: San Juan Solar 1, LLC.

Description: Initial rate filing: Filing of Shared Facilities Agreement and Request for Waivers to be effective 3/20/2024.

Filed Date: 3/19/24.

Accession Number: 20240319–5125.

Comment Date: 5 p.m. ET 4/9/24.

Docket Numbers: ER24–1568–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF–SECI-Shady Hills Dynamic Transfer Agmt RS No. 429 to be effective 6/1/2024.

Filed Date: 3/19/24.

Accession Number: 20240319–5130.

Comment Date: 5 p.m. ET 4/9/24.

Docket Numbers: ER24–1569–000.

Applicants: Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: Duke Energy Florida, LLC submits tariff filing per 35.13(a)(2)(iii: Joint OATT Clean Up Filing 2024 to be effective 11/9/2022.

Filed Date: 3/19/24.

Accession Number: 20240319–5147.

Comment Date: 5 p.m. ET 4/9/24.

Docket Numbers: ER24–1571–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 367 to be effective 2/19/2024.

Filed Date: 3/19/24.

Accession Number: 20240319–5162.

Comment Date: 5 p.m. ET 4/9/24.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH24–8–000.

Applicants: New Jersey Resources Corporation.

Description: New Jersey Resources Corporation submits FERC–65A Notice of Change in Fact to Waiver Notification.

Filed Date: 3/19/24.

Accession Number: 20240319–5089.

Comment Date: 5 p.m. ET 4/9/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: March 19, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06261 Filed 3–22–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2024–0099, FRL–11839–01–OA]

Notice of Meeting of the EPA Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held virtually and in-person on May 15–16, 2024 at the U.S. Environmental Protection Agency (EPA) Headquarters located at 1200 Pennsylvania Avenue NW, Washington, DC 20460. The CHPAC advises the EPA on science, regulations and other issues relating to children's environmental health.

DATES: Meeting dates are May 15, 2024, from 10 a.m. to 5 p.m. and May 16, 2024, from 10 a.m. to 3:30 p.m. (ET).

ADDRESSES:

Virtual Public Meeting: You must register online to receive the webcast meeting link and audio teleconference information. Please follow the registration instructions that will be announced on the CHPAC website at: *https://www.epa.gov/children/chpac* by April 15, 2024.

Written Comments: Submit written comments, identified by docket identification (ID) number EPA–HQ–OA–2024–0099, through the Federal eRulemaking Portal at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Comments should be submitted on or before May 1, 2024. Anyone submitting written comments after this date should contact Amelia Nguyen, listed under **FOR FURTHER INFORMATION CONTACT**. Do not electronically submit any information you consider to be Confidential Business Information (CBI; broadly defined as proprietary information, considered confidential to the submitter, the release of which would cause substantial business injury to the owner) or other information whose disclosure is restricted by statute. Additional information on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets. Special accommodations:* For information on access or services for individuals with disabilities, and to request accommodation for a disability, please contact Amelia Nguyen, listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Amelia Nguyen, Office of Children's Health Protection, U.S. EPA, MC 1107T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 564–4268, or *nguyen.amelia@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. An agenda will be posted to *https://www.epa.gov/children/chpac.*

Amelia Nguyen,

Biologist, Office of Children's Health Protection.

[FR Doc. 2024–06210 Filed 3–22–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0894; FRL–11853–01–OMS]

Agency Information Collection Activities; Submission to Office of Management and Budget for Review and Approval; Comment Request; Registration of Fuels and Fuel Additives—Requirements for Manufacturers (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR) Registration of Fuels and Fuel Additives—Requirements for Manufacturers (EPA ICR Number 0309.17, OMB Control Number 2060–0150) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed revision of the ICR, which is currently approved through March 31, 2024. Public comments were previously requested via the **Federal Register** on July 5, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Additional comments may be submitted on or before April 24, 2024.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0894, to EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Compliance Division, Office of Transportation and Air Quality, Mail Code 6405A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2801; email address: *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR which is currently approved through 3/31/24. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on July 5, 2023 during a 60-day comment period (88 FR 42938). This notice allows for an additional 30 days for public comments. Supporting documents which explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: In accordance with the regulations at 40 CFR part 79, subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of motor-vehicle gasoline, motor-vehicle diesel fuel, and additives for those fuels, are required to have these products registered by EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR 79, Subpart F, is covered by a separate information collection. Manufacturers are also required to submit reports annually on production volume and related information. The information is used to identify products whose evaporative or combustion emissions may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. The information is also used to ensure that fuel additives comply with EPA requirements for protecting catalytic converters and other automotive emission controls. The data have been used to construct a comprehensive data base on fuel and additive composition. The Mine Safety and Health Administration of the Department of Labor restricts the use of diesel additives in underground coal mines to those registered by EPA. Most of the information is business confidential.

Form Numbers: EPA Forms 3520–12, for the registration of a new fuel, and 3520–13, for the registration of a new fuel additive, have been replaced with on-line registration at: *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/register-or-update-fuel-or-fuel-additive-request.* EPA Forms for annual reports, 3520–12A, 3520–12Q, 3520–13A, and 3520–13B, are available at: *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/how-report-annually-fuel-and-fuel-additive* and may be submitted on-line.

Respondents/affected entities: Manufacturers and importers of motor-vehicle gasoline, motor-vehicle diesel fuel, and additives to those fuels.

Respondents obligation to respond: Mandatory per 40 CFR part 79.

Estimated number of respondents: 1,975.

Frequency of response: Annually.

Total estimated burden: 20,990 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2.3 million per year.

Changes in estimates: There is a decrease of 1,510 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a slight decrease in the new registration activity and the conversion of the quarterly report for fuel manufacturers to an annual report.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–06172 Filed 3–22–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL11845–01–OA]

Request for Nominations to Historically Black Colleges and Universities and Minority Serving Institutions Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for applications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites applications from a diverse range of qualified candidates to be considered for appointment to the Historically Black Colleges and Universities and Minority Serving Institutions Advisory

Council (HBCU-MSI AC). Approximately 15–20 vacancies are expected to be filled by Fall 2024. For appointment consideration, nominations should be submitted by May 8th, 2024. Sources in addition to this **Federal Register** notice may also be utilized in the solicitation of nominees.

FOR FURTHER INFORMATION CONTACT: Pradnya Bhandari, Designated Federal Officer, Office of Public Engagement and Environmental Education, *HBCU-MSI.AC@epa.gov,* telephone 919–937–1989.

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities and Minority Serving Institutions Advisory Council (HBCU-MSI AC) is a federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92–463. The HBCU-MSI AC was created in 2023 by the United States Environmental Protection Agency's Office of Public Engagement and Environmental Education at the direction of the Administrator of EPA. Implementing authority was delegated to the Administrator of EPA. The HBCU-MSI AC provides independent advice and recommendations to the Administrator of the Environmental Protection Agency (EPA) on how to leverage Historically Black Colleges and Universities and Minority Serving Institutions to help diversify the agency's workforce and nurture the next generation of environmental leaders and ensure that these vital institutions of higher learning have the resources and support to continue to thrive for generations to come. MSIs are institutions of higher education that serve minority populations and include HBCUs, Hispanic-Serving Institutions (HSIs), Tribal Colleges and Universities (TCUs), and Asian American and Pacific Islander Serving Institutions (AAPISIs).

The HBCU-MSI AC is part of a comprehensive effort to advance equity in economic and educational opportunities for all Americans while protecting human health and the environment. Members are appointed by the EPA Administrator for a two-year term. The HBCU-MSI AC expects to meet approximately two to three times a year for in-person, virtual or hybrid meetings, subject to the availability of appropriations. Members serve on the committee in a voluntary capacity. Although we are unable to offer compensation or an honorarium, members may receive travel and per diem allowances, according to applicable Federal travel regulations and the agency's budget. To learn more about HBCU-MSI AC, please visit *https://www.epa.gov/faca/historically-black-colleges-and-universities-and-minority-serving-institutions-advisory*.

The EPA is seeking nominations from a variety of sectors including but not limited to representatives from business and industry, academia, non-governmental organizations, and local, county, and tribal governments that have experience working at or in partnership with HBCUs and/or MSIs. According to the mandates of FACA, committees are required to support diversity across a broad range of constituencies, sectors, and groups.

In accordance with Executive Order 14035 (June 25, 2021) and consistent with law, EPA values and welcomes opportunities to increase diversity, equity, inclusion, and accessibility on its Federal advisory committees. EPA's Federal advisory committees strive to have a workforce that reflects the diversity of the American people.

The following criteria will be used to evaluate applicants:

- The HBCU-MSI AC will be composed of approximately 15–20 members who will generally serve as Representative members of non-federal interests appointed by the Administrator of EPA.
- Members must have a strong affiliation with HBCUs and/or MSIs or the communities represented and served by HBCUs and/or MSIs, including through education, work, or partnerships.
- Members must demonstrate a knowledge of the student continuum from college to career, preferably through related experience with HBCUs and/or MSIs. In selecting members, EPA will consider candidates from business and industry, academic institutions, state, local and tribal governments, public interest groups, environmental organizations, service groups, and more. In determining a fair spread across categories, no more than 60% of the advisory committee can come from a single categorical entity.
- Members must demonstrate notable commitment to environmental issues with extensive involvement, knowledge, or engagement with relevant material and/or affected communities.
- Members must demonstrate a working knowledge of Federal, state, and local government operations and systems.
- Members must demonstrate a notable commitment to Diversity, Equity, Inclusion and Accessibility, including for underserved communities.
- Members must demonstrate an ability to work in a consensus building process with a wide range of representative from diverse constituencies.
- Members must be able to contribute approximately 10 to 15 hours per month to HBCU-MSI AC activities, including the attendance at meetings and participating in the development of advice letters/reports and other material.
- Members must demonstrate potential for active and constructive involvement in HBCU-MSI AC work.

How to Submit Applications: Any interested person or organization may apply to be considered for an appointment to serve on the Historically Black Colleges and Universities and Minority Serving Institutions Advisory Council.

- Applications must include:

(1) contact information as outlined below:

▪ Applicants must provide their: full legal name, preferred name if applicable, pronouns, date of birth, current home address, and phone number.

(2) resume or curriculum vitae (CV)

(3) statement of interest explaining why you would like to serve on this committee:

▪ The statement of interest should describe how the nominee's background, knowledge, and experience would add value to the committee's work, and how the individual's qualifications would contribute to the overall diversity of the Historically Black Colleges and Universities and Minority Serving Institutions Advisory Council. To help the Agency in evaluating the effectiveness of its outreach efforts, please include in the statement of interest how you learned of this opportunity.

Please be aware that EPA's policy is that, unless otherwise prescribed by statute, members generally are appointed for a two-year term. For appointment consideration, interested nominees should submit the application materials electronically via email to Pradnya Bhandari at *HBCU-MSI.AC@epa.gov,* with the subject line HBCU-MSI AC, COMMITTEE APPLICATION PACKAGE 2024 for (Name of Nominee) by May 8th, 2024.

Jessica Loya,

Deputy Associate Administrator, Office of Public Engagement, Office of Public Engagement and Environmental Education, Office of the Administrator.

[FR Doc. 2024–06201 Filed 3–22–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0041; 11852–01–OAR]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; RadNet (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), RadNet (EPA ICR Number 0877.15 OMB Control Number 2060–0015) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2024. Public comments were previously requested via the **Federal Register** on June 19, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments must be submitted on or before April 24, 2024.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0041, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: John Griggs, OAR/ORIA/NAREL, Environmental Protection Agency, National Analytical Radiation Environmental Laboratory, 540 South Morris Ave., Montgomery, AL 36115; telephone number: (334) 270–3400; fax number: (334) 270–3450; email address: *griggs.john@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through 3/31/2024. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on 6/20/2023 during a 60-day comment period (88 FR 39845). This notice allows for an additional 30 days for public comments. Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: RadNet is a national network of stations collecting environmental media that include air, precipitation, and drinking water. Samples are sent to EPA's National Analytical Radiation Environmental Lab (NAREL) in Montgomery, Alabama, where they are analyzed for radioactivity. RadNet provides emergency response/homeland security and ambient monitoring information on levels of environmental radiation across the nation. All station operators participate in RadNet voluntarily. Station operators complete information forms that accompany the samples. The forms request information pertaining to sample type, sample location, start and stop date and times for sampling, length of sampling period, and volume represented. Data from RadNet are made available regularly on the Agency websites—Envirofacts and the EPA website *www.epa.gov/radnet.*

Form numbers: RadNet Air Particulate Sample (EPA Form 5900–24); RadNet Precipitation Report Form (EPA Form 5900–27); RadNet Drinking Water Report Form (EPA Form 5900–29); and RadNet Supply Request Form (EPA Form 5900–23).

Respondents/affected entities: Primarily Tribal and Local Officials.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 213.

Frequency of response: Varies depending upon sample media type. Responses vary from twice weekly to quarterly.

Total estimated burden: 3,640 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,622,124 (per year), includes annualized capital costs, operational costs, and maintenance costs.

Changes in estimates: There is a 2.2 percent reduction in burden from 3,722 hours annually. While the RadNet network is fully established and operating with essentially no changes expected, 30% of the drinking water sampling locations have not responded since the beginning of the COVID–19 pandemic. There is a 4.5 percent increase in costs due to increases in Federal and contractor salaries and cost of goods and supplies.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–06170 Filed 3–22–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0163]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0163).

DATES: Comments must be submitted on or before May 24, 2024.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

1. Title: Qualified Financial Contracts Part 371.

OMB Number: 3064–0163.

Forms: None.

Affected Public: State non-member banks and savings associations.

Burden Estimate:

TABLE 1—SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0163]

Information collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Full Scope Entities, Implementation (Mandatory)	Recordkeeping (Annual)	1	1	6,000:00	6,000
2. Full Scope Entities, Ongoing (Mandatory)	Recordkeeping (Annual)	11	1	250:00	2,750
3. Limited Scope Entities, Implementation (Mandatory)	Recordkeeping (Annual)	3	1	23:30	71
4. Limited Scope Entities, Ongoing (Mandatory)	Recordkeeping (Annual)	10	1	11:30	115
5. Reporting Requirements for part 371 (Mandatory)	Reporting (Annual)	4	1	6:00	24
Total Annual Burden (Hours)					8,960

Source: FDIC.

General Description of Collection: This collection consists of recordkeeping requirements for qualified financial contracts (QFCs) held by insured depository institutions in troubled condition. There is no change in the methodology or substance of this information collection. The decrease in the estimated annual burden (from 10,250 hours in 2021 to 8,960 hours currently) is due to the decline in the estimated number of limited scope entities covered by Part 371.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on March 20, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–06257 Filed 3–22–24; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 89 FR 20205.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, March 26, 2024 at 10:00 a.m. and its continuation at the conclusion of the open meeting on March 27, 2024.

ADDITIONAL INFORMATION:

This meeting will be cancelled if the Commission is not open due to a funding lapse.

* * * * *

CONTACT FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Submitted: March 21, 2024.

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2024–06396 Filed 3–21–24; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

[DOCKET NO. 24–14]

AirBoss Defense Group, LLC, Complainant v. FedEx Trade Networks Transport & Brokerage, Inc.; Mediterranean Shipping Company S.A. and Mediterranean Shipping Company (USA) Inc., as Agent for Mediterranean Shipping Company S.A.; and Total Terminals International, LLC, Respondents

Served: March 20, 2024.

Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (the ''Commission'') by AirBoss Defense Group, LLC (the ''Complainant'') against FedEx Trade Networks Transport & Brokerage, Inc.; Mediterranean Shipping Company S.A. and Mediterranean Shipping Company (USA) Inc., as agent for Mediterranean Shipping Company S.A.; and Total Terminals International, LLC (the ''Respondents''). Complainant states that the Commission has subject matter jurisdiction under the Shipping Act of 1984, as amended, 46 U.S.C. 40101 *et seq.*

Complainant is a limited liability company existing under the laws of the State of Delaware and, at all material times, was a purchaser of goods in international commerce.

Complainant identifies Respondent FedEx Trade Networks Transport & Brokerage, Inc. as a New York

corporation with a principal place of business in Memphis, Tennessee and as a non-vessel-operating common carrier.

Complainant identifies Respondent Mediterranean Shipping Company S.A. as a global container shipping company and ocean common carrier with its headquarters in Geneva, Switzerland that conducts business in the United States through Mediterranean Shipping Company (USA) Inc., whose office is in New York, New York.

Complainant identifies Respondent Total Terminals International, LLC as a corporation organized and existing under the laws of State of Delaware and was a marine terminal operator with a principal place of business in Long Beach, California.

Complainant alleges that Respondents violated 46 U.S.C. 41102(c); 41104(a)(14) and (15); 41104(d); 41104(f); and 46 CFR 545.4 and 545.5. Complainant alleges these violations arose from the continued assessment of demurrage, detention, chassis, and per diem charges (the ''charges''), a failure to extend the free time, and other acts and omissions related to containers with goods that were subject to a United States Customs and Border Protection Withhold Release Order (the ''containers''). Complainant also alleges that Respondent FedEx Trade Networks Transport & Brokerage, Inc. violated 46 U.S.C. 41104(a)(2) and (11) and 46 CFR 532.5. Complainant alleges these violations arose from the acceptance of cargo that did not have a tariff or bond, a demand for payment of charges without invoices, and other acts and omissions related to the containers.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/24-14/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by March 20, 2025, and the final decision of the Commission shall be issued by October 6, 2025.

David Eng,

Secretary.

[FR Doc. 2024–06219 Filed 3–22–24; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0018; Docket No. 2024–0053; Sequence No. 2]

Submission for OMB Review; Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding Federal Acquisition Regulation part 3, Improper Business Practices and Personal Conflicts of Interest.

DATES: Submit comments on or before April 24, 2024.

ADDRESSES: Written comments and recommendations for this 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB control number, Title, and Any Associated Form(s)

9000–0018, Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest.

B. Need and Uses

This clearance covers the information that offerors and contractors must submit to comply with the following Federal Acquisition Regulation (FAR) part 3 requirements:

- FAR 52.203–2, Certificate of Independent Price Determination. This provision requires offerors to include with their offer a certification that their prices have been arrived at independently, have not been or will not be knowingly disclosed, and have not been submitted for the purpose of restricting competition. Prior to making an award, a contracting officer will ensure the offeror has provided the certification. An offer will not be considered for award where the certificate has been deleted or modified. Federal agencies will report to the Attorney General for investigation any deletions or modifications of the certificate and suspected false certificates.
- FAR 52.203–7, Anti-Kickback Procedures. This clause requires contractors to report in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General possible violations of 41 U.S.C. chapter 87, Kickbacks. The clause also requires the contractor to notify the contracting officer when monies are withheld from sums owed a subcontractor under the prime contract, when the contracting officer has directed the prime contractor to do so to offset the amount of a kickback. The Federal agency will use the information reported by contractors to investigate suspected violations. The notification to the contracting officer of a withholding of payment to a subcontractor is used to help the contracting officer ensure the amount of a kickback is appropriately offset.
- FAR 52.203–13, Contractor Code of Business Ethics and Conduct. This clause requires contractors and subcontractors to report to the agency Office of the Inspector General when the contractor has credible evidence that a principal, employee, agent, or subcontractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C., or a violation of the Civil False Claims Act (31 U.S.C. 3729–3733). The Federal agency will use the information reported by contractors to investigate suspected violations.
- FAR 52.203–16, Preventing Personal Conflicts of Interest. This clause requires contractors and subcontractors to obtain and maintain from each employee a disclosure of interests that might be affected by the task to which the employee has been assigned under the contract. Contractors and subcontractors must report to the contracting officer any personal conflict of interest violation by an employee and the proposed corrective/follow-up actions to be taken. In exceptional circumstances, the contractor may request the head of the contracting activity approve a plan to mitigate a

personal conflict of interest or waive the requirement to prevent personal conflicts of interest. The information is used by the contractor and the contracting officer to identify and mitigate personal conflicts of interest.

C. Annual Burden

Respondents: 9,642.
Recordkeepers: 9,147.
Total Annual Responses: 352,296.
Total Burden Hours: 677,460. (128,640 reporting hours + 548,820 recordkeeping hours).

D. Public Comment

A 60-day notice was published in the **Federal Register** at 89 FR 2952, on January 17, 2024. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0018, Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2024–06222 Filed 3–22–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single Source Cooperative Agreement To Fund White Mountain Apache Tribe (WMAT), San Carlos Apache Tribe (SCAT), Gila River Indian Community (GRIC), Navajo Nation (NN), Hopi Tribe and Tohono O'odham Nation (TON)

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 6 separate awards to fund White Mountain Apache Tribe (WMAT), San Carlos Apache Tribe (SCAT), Gila River Indian Community (GRIC), Navajo Nation (NN), Hopi Tribe and Tohono O'odham Nation (TON). Funding amounts will be determined on disease burden during 2010–2020. The total 5 year period amount for the (6) recipients is $1,800,000.00 The awards will address Rocky Mountain Spotted Fever (RMSF) prevention activities, including but not limited to vector control, outreach, and education, and RMSF prevention support services.

DATES: The period for these awards will be September 1st, 2024, through August 31st, 2029.

FOR FURTHER INFORMATION CONTACT: Katherine Ficalora, (Division of Vector-Borne Diseases, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, 3156 Rampart Road, Fort Collins, CO. Telephone: (970) 221–6425, Email: *kzx8@cdc.gov*.

SUPPLEMENTARY INFORMATION: The single source award will improve dissemination of proven RMSF prevention practices to AI communities in Arizona; Increase community understanding of RMSF and how it can be prevented; Conduct an evaluation of current RMSF programs; Increase the availability and utilization of public health resources such as vector control and animal control to support sustainable RMSF prevention.

White Mountain Apache Tribe (WMAT), San Carlos Apache Tribe (SCAT), Gila River Indian Community (GRIC), Navajo Nation (NN), Hopi Tribe and Tohono O'odham Nation (TON) are in a unique position to conduct this work, as they are experiencing epidemic levels of RMSF not seen anywhere else in the country, transmitted by the brown dog tick.

Summary of the Award

Recipient: White Mountain Apache Tribe (WMAT), San Carlos Apache Tribe (SCAT), Gila River Indian Community (GRIC), Navajo Nation (NN), Hopi Tribe and Tohono O'odham Nation (TON)

Purpose of the Award: The purpose of these awards is to increase dissemination or process improvement of proven interventions for RMSF prevention efforts, develop and evaluate of locally minded RMSF communications plan, increase availability of RMSF support services such as vector control and animal control to strengthen sustainable RMSF prevention programs.

- *Amount of Award:* Initial awards may be weighted based on disease burden during 2010–2020:

—Tribes reporting zero cases are ineligible for this funding
—Tribes reporting 1–10 cases of RMSF are eligible for $10,000–$30,000
—Tribes reporting 11–30 cases of RMSF are eligible for $20,000–$60,000
—Tribes reporting >30 cases are eligible for $50,000–$300,000''

Expected total funding of approximately $1,800,000 for 5-year period of performance, subject to availability of funds.

Authority: This program is authorized under the Public Health Service Act section 317(k)(2), as amended (42 U.S.C. 247(b)(k)(2)).

Period of Performance: September 1, 2024, through August 31, 2029.

Dated: March 19, 2024.

Jamie Legier,

Acting Director, Office of Grants Services, Centers for Disease Control and Prevention.

[FR Doc. 2024–06234 Filed 3–22–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3458–N]

Medicare Program; Virtual Meeting of the Medicare Evidence Development and Coverage Advisory Committee—May 21, 2024

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

ACTION: Notice.

SUMMARY: This notice announces a virtual public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) (''Committee'') will be held on Tuesday, May 21, 2024. The MEDCAC panel will consider which health outcomes in studies of devices for self-management of Type 1 and insulin-dependent Type 2 diabetes should be of interest to CMS. Given the increased emphasis on new and innovative medical products for difficult to manage conditions, some studies of new medical technologies have focused on short-term data with greater reliance on intermediate outcomes and surrogate endpoints. As a result, assessments of new medical technologies have more frequent evidence gaps with respect to clinically meaningful health outcomes for CMS beneficiaries. The MEDCAC panel will examine the growing challenges associated with the decreased level of evidence of certain new and innovative technologies. By voting on specific questions, and by their discussions, MEDCAC panel members will advise CMS about the ideal health outcomes in

research studies of devices for diabetes self-management, appropriate measurement instruments and adequate follow-up durations to help to provide clarity and transparency in future National Coverage Analyses (NCAs). This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES:

Meeting Date: The virtual meeting will be held on Tuesday, May 21, 2024, from 10:00 a.m. until 4:00 p.m., Eastern Daylight Time (EDT).

Deadline for Submission of Written Comments: Written comments must be received at the email address specified in the **ADDRESSES** section of this notice by 5:00 p.m., Eastern Daylight Time (EDT), on Monday, April 22, 2024. Once submitted, all comments are final.

Deadlines for Speaker Registration and Presentation Materials: The deadline to register to be a speaker and to submit PowerPoint presentation materials and writings that will be used in support of an oral presentation is 5:00 p.m., EDT, on Monday, April 22, 2024. Speakers may register via email by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the email address specified in the **ADDRESSES** section of this notice.

Submission of Presentations and Comments: Presentation materials and written comments that will be presented at the meeting must be submitted via email to *MedCACpresentations@cms.hhs.gov* section of this notice by Monday, April 22, 2024.

Deadline for All Other Attendees Registration: Individuals who want to join the meeting may register online at: *https://cms.zoomgov.com/meeting/register/vJItcu6hpj4qHL_IlNFkPTSJOCXDvu2IiGg* until May 21, 2024, EDT at 10 a.m.

Webinar and Teleconference Meeting Information: Teleconference dial-in instructions, and related webinar details will be posted on the meeting agenda, which will be available on the CMS website *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&*. Participants in the MEDCAC meeting will require the following: a computer, laptop or smartphone where the Zoom application needs to be downloaded; a strong Wi-Fi or an internet connection and access to use Chrome or Firefox web browser and a webcam if the meeting participant is scheduled to speak or make a presentation during the meeting.

Deadline for Submitting a Request for Special Accommodations: Individuals viewing or listening to the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should send an email to the MEDCAC Coordinator as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than 5:00 p.m., EDT on Friday, May 3, 2024.

ADDRESSES: To allow for broader public participation in the meeting, the Panel meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Tara Hall, MEDCAC Coordinator, via email at *Tara.Hall@cms.hhs.gov* or by phone 410–786–4347.

SUPPLEMENTARY INFORMATION:

I. Background

MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), is advisory in nature, with all final coverage decisions resting with CMS. MEDCAC is used to supplement CMS' internal expertise. Accordingly, the advice rendered by the MEDCAC is most useful when it results from a process of full scientific inquiry and thoughtful discussion, in an open forum, with careful framing of recommendations and clear identification of the basis of those recommendations. MEDCAC members are valued for their background, education, and expertise in a wide variety of scientific, clinical, and other related fields. (For more information on MEDCAC, see the MEDCAC Charter (*http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/Downloads/medcaccharter.pdf*) and the CMS Guidance Document, *Factors CMS Considers in Referring Topics to the MEDCAC* (*http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=10*).

II. Meeting Topic and Format

This notice announces the Tuesday, May 21, 2024, virtual public meeting of the Committee. The MEDCAC panel will examine what health outcomes in studies of devices for self-management of Type 1 and insulin-dependent Type 2 diabetes should be of interest to CMS. Given the increased emphasis on new and innovative medical products for difficult to manage conditions, some studies of new medical technologies have focused on short-term data with greater reliance on intermediate outcomes and surrogate endpoints. As a result, there are more frequent evidence gaps with respect to the clinically meaningful health outcomes for CMS beneficiaries in assessments of medical technologies. The MEDCAC panel will examine the growing challenges associated with the decreased level of evidence of certain new and innovative technologies. By voting on specific questions, and by their discussions, MEDCAC panel members will advise CMS about the ideal endpoints and health outcomes in research studies of devices for self-management of Type 1 and insulin-dependent Type 2 diabetes, appropriate measurement instruments and follow-up durations to help to provide clarity and transparency of National Coverage Analyses (NCAs).

Background information about this topic, including panel materials, is available at *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&*. Electronic copies of all the meeting materials will be on the CMS website approximately 30 days before the meeting. We encourage the participation of organizations with expertise in the appraisal of the state of evidence for the use of devices for self-management of Type 1 and insulin-dependent Type 2 diabetes. This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. Time allotted for each presentation may be limited, based on the number of speakers. If the number of registrants requesting to speak is greater than what can be reasonably accommodated during the scheduled open public hearing session, we may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 7, 2024. Your comments must focus on issues specific to the list of topics that we have proposed to the Committee. The list of research topics to be discussed at the meeting will be available on the following website prior to the meeting: *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&*. We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed. Speakers presenting at the MEDCAC meeting must include a full disclosure slide as their second slide in their presentation for financial interests (for example, type of financial association—consultant, research support, advisory board, and an indication of level, such as minor association <$10,000 or major

association >$10,000) as well as intellectual conflicts of interest (for example, involvement in a federal or nonfederal advisory committee that has discussed the issue) that may pertain in any way to the subject of this meeting. If you are representing an organization, we require that you also disclose conflict of interest information for that organization. If you do not have a PowerPoint presentation, you will need to present the full disclosure information requested previously at the beginning of your statement to the Committee.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote, and the Committee will make its recommendation(s) to CMS.

III. Registration Instructions

CMS' Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register online at *https://cms.zoomgov.com/meeting/register/vJItcu6hpj4qHL_llNFkPTSJOCXDvu2IiGg* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your state-issued driver's license), address, organization, telephone number(s), and email address. You will receive a registration confirmation with instructions for your participation at the virtual public meeting.

IV. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The Chief Medical Officer and Acting Director of the Center for Clinical Standards and Quality for the Centers for Medicare & Medicaid Services (CMS), Dora Hughes, having reviewed and approved this document, authorizes Chyana Woodyard, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Chyana Woodyard,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024–06148 Filed 3–22–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–381, CMS–10279, CMS–10774 and CMS–10636]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 24, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–381 Identification of Extension Units of Medicare Approved Outpatient Physical Therapy/Outpatient Speech Pathology (OPT/OSP) Providers and Supporting Regulations

CMS–10752 Submission of 1135 Waiver Request Automated Process

CMS–10774 The International Classification of Diseases, 10th Revision, Procedure Coding System (ICD–10–PCS)

CMS–10636 Triennial Network Adequacy Review for Medicare Advantage Organizations and 1876 Cost Plans

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for

approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Identification of Extension Units of Medicare Approved Outpatient Physical Therapy/Outpatient Speech Pathology (OPT/OSP) Providers and Supporting Regulations; *Use:* Form CMS–381 was developed to ensure that each OPT/OSP extension location at which OPT/OSP providers furnish services, must be reported by the providers to the State Survey Agencies (SAs). Form CMS–381 is completed when: (1) new OPT/OSP providers enter the Medicare program; (2) when existing OPT/OPS providers delete or add a service, or close or add an extension location; or, (3) when existing OPT/OSP providers are recertified by the State Survey Agency every 6 years.

In 2022, CMS transitioned some of the certification processes to the Center for Program Integrity (CPI) and the Medicare Administrative Contractor (MAC). *Prior to the transition, the CMS Survey Operations Group was involved in the processing of the extension location requests. As a result of the new processing instructions, CMS is now reconciling the Form CMS–381 with updates to the instructions. Additionally, CMS has revised the Form CMS–381 to incorporate the initial enrollment of OPT/OSPs which was previously completed on the Form CMS–1856 (0938–0065). CMS has combined the forms into one form in order to further align with the transitioned processes and streamline the requests from the provider community. This change will decrease the burden on both the provider community as well as CMS. Furthermore, this change will also allow for OPTs who wish to initially enroll in the Medicare program to submit an extension location request with the initial enrollment. The State Survey Agency or Accrediting Organization (for those OPTs requesting deemed status) will survey the extension location during the initial survey to verify compliance with the Medicare conditions. Form Number:* CMS–381 (OMB control number: 0938–0273); *Frequency:* Occasionally; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 506; *Total Annual Responses:* 506; *Total Annual Hours:* 253. (For policy questions regarding this collection contact Caecilia Andrews at 410–786–2190.)

2. Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Submission of 1135 Waiver Request Automated Process; *Use:* Waivers under section 1135 of the Social Security Act (the Act) and certain flexibilities allow the CMS to relax certain requirements, known as the Conditions of Participation (CoPs) or Conditions of Coverage to promote the health and safety of beneficiaries. Under section 1135 of the Act, the Secretary may temporarily waive or modify certain Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements to ensure that sufficient health care services are available to meet the needs of individuals enrolled in Social Security Act programs in the emergency area and time periods. These waivers ensure that healthcare entities/caregivers who provide such services in good faith can be reimbursed and exempted from sanctions.

During emergencies, CMS must be able to apply program waivers and flexibilities under section 1135 of the Social Security Act, in a timely manner to respond quickly to unfolding events. In a disaster or emergency, waivers and flexibilities assist health care providers/suppliers in providing timely healthcare and services to people who have been affected and enables States, Federal districts, and U.S. Territories to ensure Medicare and/or Medicaid beneficiaries have continued access to care. During disasters and emergencies, it is not uncommon to evacuate patients in health care facilities to other provider settings or across State lines, especially, during hurricane, wildfire, and tornado events. CMS must collect relevant information for which a provider is requesting a waiver or flexibility to make proper decisions about approving or denying such requests. Collection of this data aids in the prevention of gaps in access to care and services before, during, and after an emergency. CMS must also respond to inquiries related to a Public Health Emergency (PHE) from providers. CMS is not collecting information from these inquiries; we are merely responding to them.

The collection of the information surrounding 1135 Waiver requests/inquiries is based on a case-by-case basis and not regularly scheduled (*e.g.,* quarterly, annually, by all providers/suppliers). The collection of information only occurs when the healthcare entity, impacted by an emergency, is requesting waivers/flexibilities under Section 1135 of the Act or inquiring about PHEs. The collection of information is also dependent on provider types; therefore, it is not a collection for all Medicare-participating facilities. In 2021, we implemented a streamlined, automated process to standardize the 1135 waiver requests and inquiries submitted based on lessons learned during the COVID–19 PHE.

Furthermore, the normal operations of a healthcare provider are disrupted by emergencies or disasters occasionally. When this occurs, State Survey Agencies (SA) deliver a provider/beneficiary tracking report regarding the current status of all affected healthcare providers and their beneficiaries. We are revising this information collection streamlined automated process to update for clarity during emergencies. To quickly identify patient risks/needs, CMS added fields to assess sufficient staffing, equipment and supplies as well as added an assessment of a cyber security attack on the care and services provided to patients (if applicable). Moreover, to decrease the time/effort of stakeholders (State Survey Agencies (SAs)/Providers) submitting this data during emergencies, CMS also added a feature to autofill multiple fields when the stakeholder documents a valid CMS Certification Number (CCN). This streamlined automated process will consist of a public facing web form as well as a process for SAs/Providers to submit data using extracts (CSV or Excel) on emergent events impacting Health Care Facilities via automated mail handler system. Both processes (public facing web form and extracts via an automated mail handler system) are known as the Health Care Facility (HCF) Operational Status. Finally, Acute Hospital Care at Home waiver is granted at the individual hospital/CMS Certification Number (CCN) level and waives § 482.23(b) and (b)(1) of the Hospital Conditions of Participation (CoPs) which require nursing services to be provided on premises 24 hours a day, 7 days a week and the immediate availability of a registered nurse for care of any patient (This waiver allows hospitals to utilize models of *at-home* hospital care). This Acute Hospital Care at Home web form was revised to add questions for the respondents to meet requirements for all hospitals for (1) the Patient Rights CoP at 42 CFR 482.13, (2) the Consolidated Appropriations Act of 2023 and (3) for emergency response. *Form Number:* CMS–10752 (OMB control number: 0938–1384); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions and State, Local or Tribal Governments; *Number of Respondents:* 1,020; *Total Annual Responses:* 11,916; *Total Annual Hours:*

11,916. (For policy questions regarding this collection, contact Adriane Saunders at 404–562–7484.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* The International Classification of Diseases, 10th Revision, Procedure Coding System (ICD–10–PCS); *Use:* The HIPAA Act of 1996 required CMS to adopt standards for coding systems that are used for reporting health care transactions. The Transactions and Code Sets final rule (65 FR 50312) published in the **Federal Register** on August 17, 2000 adopted the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) Volumes 1 and 2 for diagnosis codes and ICD–9–CM Volume 3 for inpatient hospital services and procedures as standard code sets for use by covered entities (health plans, health care clearinghouses, and those health care providers who transmit any health information in electronic form in connection with a transaction for which the Secretary has adopted a standard). ICD–9–CM Volumes 1 and 2, and ICD–9–CM Volume 3 were already widely used in administrative transactions when we promulgated the August 17, 2000 final rule, and we decided that adopting these existing code sets would be less disruptive for covered entities than modified or new code sets.

When a request is submitted in MEARIS™, the Diagnosis Related Groups (DRGs) and Coding Team in the Division of Coding and DRGs (DCDRG) have instant access to the request and accompanying materials to facilitate a more-timely review of the proposed updates or changes. Upon receipt of a procedure code request, CMS immediately acknowledges receipt of the request and communicates to the requestor that additional follow up will occur once an analyst has been assigned. In addition, CMS provides information via email communication in a letter to each requestor outlining the meeting process. CMS holds standard pre-meeting conference calls with requestors to discuss their procedure code topic request in more detail in advance of the ICD–10 C&M Committee Meetings. Also, prior to the committee meeting, we make the procedure code topic meeting materials publicly available, commonly referred to as the ''Agenda packet'' on our website at: *https://www.cms.gov/medicare/coding-billing/icd-10-codes/icd-10-coordination-maintenance-committee-materials.* Lastly, once the meeting has concluded, CMS sends a follow-up letter to the requestor informing them of next steps in the process so they can anticipate what to expect. *Form Number:* CMS–10774 (OMB control number: 0938–1409); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 80; *Total Annual Responses:* 80; *Total Annual Hours:* 800. (For policy questions regarding this collection contact Andrea Hazeley at 410–786–3543.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Triennial Network Adequacy Review for Medicare Advantage Organizations and 1876 Cost Plans; *Use:* This collection of information request is authorized under section 1852(d)(1) of the Social Security Act which permits an MA organization to select the providers from which an enrollee may receive covered benefits, provided that the MA organization makes such benefits available and accessible in the service area with promptness and in a manner which assures continuity in the provision of benefits as defined in §§ 422.112(a)(1)(i) and 422.114(a)(3)(ii) (under Part 422, Subpart C—benefits and beneficiary protections) and §§ 417.414(b) and 417.416(a) and (e) (under Part 417, Subpart J—Qualifying Conditions for Medicare Contracts).

The information will be collected by CMS through HPMS. CMS measures access to covered services through the establishment of quantitative standards for a predefined list of provider and facility specialty types. These quantitative standards are collectively referred to as the network adequacy criteria. Network adequacy is assessed at the county level and CMS requires that organizations contract with a sufficient number of providers and facilities to ensure that at least 90 percent of enrollees within a county can access care within specific travel time and distance maximums for Large Metro and Metro county types and that at least 85 percent of enrollees within a county can access care within specific travel time and distance maximums for Micro, Rural and CEAC (Counties with Extreme Access Considerations county types. *Form Number:* CMS–10636 (OMB control number: 0938–1346); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit; *Number of Respondents:* 502; *Total Annual Responses:* 2,753; *Total Annual Hours:* 27,470. (For policy questions regarding this collection contact Amber Casserly at 410–786–5530.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–06239 Filed 3–22–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Grants to States for Access and Visitation (Office of Management and Budget #: 0970–0204)

AGENCY: Division of Program Innovation, Office of Child Support Services, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Division of Program Innovation, Office of Child Support Services (OCSS), Administration for Children and Families (ACF) is requesting a 3-year extension of the Access and Visitation Survey: Annual Report (Office of Management and Budget #: 0970–0204, expiration 6/30/2024). There are no changes requested to the form.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The grant recipient and sub-grant recipient submit the spreadsheet and survey yearly. Information collected includes the number of applicants/referrals for each

program, the total number of participating individuals, and the number of persons who have completed program requirements by authorized activities (mediation—voluntary and mandatory; counseling; education; development of parenting plans; visitation enforcement, including monitoring, supervision and neutral drop-off and pickup; and development of guidelines for visitation and alternative custody arrangements. OCSS uses the information to ensure recipient's adherence statutory (sec. 469B. [42 U.S.C. 669b]) and regulatory (45 CFR part 303) requirements of ''*Grants to States for Access and Visitation*.''

Respondents: State child access and visitation programs and State or local service providers.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Online Portal Survey by States and Jurisdictions	53	1	16	848
Survey of local service grant recipients	264	1	16	4,224

Estimated Total Annual Burden Hours: 5072.

Authority: Sec.469B (42 U.S.C.669b); 45 CFR part 303.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–06243 Filed 3–22–24; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Request for Information: Elder Justice Coordinating Council Priorities

AGENCY: Administration for Community Living, HHS.

ACTION: Request for information.

SUMMARY: The Administration for Community Living (ACL) seeks information on recommended area(s) and or issue(s) for which elder justice stakeholders believe the Elder Justice Coordinating Council (Council) can be the most beneficial to promoting elder justice and have the greatest positive impact for survivors of elder abuse, neglect, and exploitation and their communities.

DATES: Information must be submitted electronically by 11:59 p.m. (EDT) April 24, 2024.

ADDRESSES: Interested persons are encouraged to submit electronic comments to: Administration on Aging, *ejpubliccomments@acl.hhs.gov*. Include ''EJCC Priorities'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Stephanie Whittier-Eliason, (202) 795–7467 Stephanie *Whittier-Eliason@acl.hhs.gov*. The *ejpubliccomments@acl.hhs.gov* email is a resource mailbox established to receive public input regarding the Elder Justice Coordinating Council and should not be used to request information beyond the scope of this public input opportunity. Please do not use this mailbox to report suspicions of abuse, neglect, or exploitation. Any suspected abuse, neglect or financial exploitation should be reported to your state's Adult Protective Services.

SUPPLEMENTARY INFORMATION: Passed in 2010, the Elder Justice Act establishes the Elder Justice Coordinating Council (Council) to coordinate activities related to elder abuse, neglect, and exploitation across the Federal Government. The Council is directed by the Office of the Secretary of Health and Human Services, and the Secretary serves as the Chair of the Council. The HHS Secretary has assigned responsibility for implementing the Council to the Administration on Aging (AoA) within ACL. AoA has long been engaged in efforts to protect older individuals from elder abuse including financial exploitation, physical abuse, neglect, psychological abuse, and sexual abuse.

The Council is a permanent group, which meets twice a year, with the goal of effectively coordinating the Federal response to elder abuse. The Elder Justice Act also names the Attorney General of the U.S. as a permanent member of the Council. In addition to the Secretary of Health and Human Services and the Attorney General, the statute provides for inclusion as Council members the heads of each Federal department, agency, or governmental entity identified as administering programs related to abuse, neglect, or financial exploitation. The Coordinating Council receives input and support from an Elder Justice Interagency Working Group, a group of Federal employees in Cabinet-level departments and Federal agencies with expertise in the field of elder abuse, neglect, and financial exploitation.

In 2014, the Council adopted ''Eight Recommendations from the Elder Justice Coordinating Council for Increased Federal Involvement in Addressing Elder Abuse, Neglect, and Exploitation.'' The eight recommendations represent a focused, yet balanced, approach for establishing greater Federal leadership in the area of elder justice and for improving the Federal response to elder abuse, neglect, and exploitation. These recommendations have served as a guide for Federal agencies in planning their elder justice work in the 10 years since adoption.

Public Input

Through this Request for Information (RFI), ACL is seeking input from individuals and organizations regarding the area(s) and or issue(s) about which elder justice stakeholders believe the Elder Justice Coordinating Council can be the most beneficial to promoting elder justice and have the greatest positive impact for survivors of elder abuse, neglect, and exploitation and their communities. Specifically, we would like to hear from respondents: (1) how the Council can benefit the larger elder justice community; (2) the areas of elder justice in which the Council should focus their attention, and (3) the activities, tools, resources, or components that would best help states and communities create and strengthen their systems of services and supports in order to maximize the independence, well-being, and health of people at risk for elder abuse, neglect, and exploitation, their family members, and their support networks. We also seek feedback on how the Council can advance equity, in alignment with Executive Order 13985 *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. In this regard, please keep in mind the following:

- All submissions will be considered and reviewed by ACL.

• ACL seeks recommendations to address practical matters regarding the Elder Justice Coordinating Council. (We may not include all recommendations.)

• If respondents have multiple recommendations, respondents may make multiple recommendations in the same submission.

Submission Questions

1. State the area(s) and or issue(s) in elder justice that should be considered a priority for the Federal Government to address through the Elder Justice Coordinating Council.

2. Provide detail on the reason the area(s) and or issue(s) should be considered a priority for the Council.

3. State the activities, tools, resources, or components that would effectively help states and communities create and strengthen their systems of services and supports in order to maximize the independence, well-being, and health of people at risk for elder abuse, neglect, and exploitation, their family members, and their support networks.

4. Provide detail on any benefits, including how equity will be advanced, and/or barriers that might result from the Council incorporating the recommendation.

Please Note

This RFI is being issued for information and planning purposes only. It should not be construed as a solicitation or an obligation on the part of the Federal Government or the Administration for Community Living (ACL). ACL does not intend to issue any grant or contract awards based on responses to this invitation, or to otherwise pay for the preparation of any information submitted or for the government's use of such information. ACL will not be able to respond to submissions that are not within the scope of this public comment opportunity. ACL is not authorized to receive personally identifiable information (PII) through this RFI other than the contact information of the person submitting the information. Please do not include any PII in your submission. For example, do not include names, addresses, phone, or Social Security numbers of any individuals. We will redact responses that contain PII.

How the Information Will Be Used

The information gathered through this RFI will be used to inform the Elder Justice Coordinating Council's approach to identifying areas in elder justice that could benefit from increased Federal involvement.

Dated: March 19, 2024.

Alison Barkoff,

Principal Deputy Administrator for the Administration for Community Living, performing the delegable duties of the Administrator and Assistant Secretary for Aging.

[FR Doc. 2024–06209 Filed 3–22–24; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; of the Independent Living Services (ILS) Program Performance Report (PPR) OMB Control Number 0985–0043

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the Independent Living Services (ILS) Program Performance Report (PPR) OMB 0985–0043.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EDT) or postmarked by April 24, 2024.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Peter Nye, Administration for Community Living, Washington, DC 20201, (202) 795–7606 or *OILPPRAComments@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act (44 U.S.C. 3506), the Administration for Community Living (ACL) has submitted the following proposed collection of information to OMB for review and clearance. The Independent Living Services (ILS) program provides financial assistance, through formula grants, to all fifty states, the District of Columbia, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and US Virgin Islands for expanding, and improving the provision of, IL services. The Designated State Entity (DSE) is the agency that, on behalf of the state, receives, accounts for, and disburses funds received under Part B of the Rehabilitation Act of 1973, as amended (the Act). Funds are also made available for the provision of training and technical assistance to Statewide Independent Living Councils (SILCs). The Rehabilitation Act of 1973, as amended, requires three IL program reports: (1) State Plan for Independent Living (SPIL), (2) ILS Program Performance Report, and (3) Center for Independent Living (CIL) PPR. The ILS PPR is submitted annually by the SILC and DSE in every state, territory, and outlying area that receives Part B funds and in the District of Columbia. The ILS PPRs are used by ACL to assess grantees' compliance with title VII of the Act, with 45 CFR part 1329 of the Code of Federal Regulations, and with applicable provisions of the HHS Regulations at 45 CFR part 75. The ILS PPR serves as the primary basis for ACL's monitoring activities in fulfillment of its responsibilities under sections 706 and 722 of the Act. The PPR is also used by ACL to design CIL and SILC training and technical assistance programs authorized by section 721 of the Act.

ACL will adhere to best practices for collection of all demographic information in accordance with OMB guidance—including, but not limited to guidance specific to the collection of sexual orientation and gender identity (SOGI) items that support alignment with Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities through the federal government, Executive Order 14075 on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, and Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation. Understanding these disparities can and should lead to improved service delivery for ACL's programs and populations served.

Comments in Response to the 60-Day Federal Register Notice

A notice published in the **Federal Register** at 88 FR 78369 on November 15, 2023. During the 60-day comment

period, ACL received approximately one-hundred and eleven comments on many aspects of the ILS PPR. A public comment and ACL's response to comment table is listed in Supporting Statement A.

Estimated Program Burden: ACL estimates the burden of this collection of information as follows:

The PPR will be sent to representatives of fifty states, the District of Columbia, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and US Virgin Islands. The approximate burden for completion is thirty-six hours per respondent, which includes time to review the instructions, read the questions, and complete responses. This results in a total annual burden estimate of 2,016 hours.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Number of respondents	Responses per respondent	Average burden hours per response	Total burden hours
56	1	36	2,016

Dated: March 19, 2024.

Alison Barkoff,

Principal Deputy Administrator for the Administration for Community Living, performing the delegable duties of the Administrator and the Assistant Secretary for Aging.

[FR Doc. 2024–06207 Filed 3–22–24; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; ACL Program Performance Report Generic Information Collection, OMB Control Number 0985–NEW

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-day notice collects comments on the information collection requirements related to the ACL Program Performance Report Generic Information Collection, OMB 0985–NEW.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EDT) or postmarked by April 24, 2024.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Shannon Skowronski, Administration for Community Living, *evaluation@acl.hhs.gov,* (202) 795–7316.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act (44 U.S.C. 3506), the Administration for Community Living (ACL) has submitted the following proposed collection of information to OMB for review and clearance. In 1965, the Older Americans Act (OAA) was passed in response to concerns by policymakers about a lack of community social services for older adults. The OAA established authority for grants for community planning and social services, research and development projects, and personnel training in the field of aging. The Elder Justice Act (EJA), passed in 2010, is the first comprehensive legislation to address the abuse, neglect, and exploitation of older adults at the Federal level. OAA and EJA programs help advance ACL's mission of supporting the independence, well-being, and health of older adults, older adults with disabilities, and their families and caregivers. This proposed information collection will gather program performance data for ACL formula and competitive grant programs authorized by the Older Americans Act (OAA) and the Elder Justice Act (EJA), as required by and in accordance with Public Law 116–131 and 42 U.S.C. chapter 7, subchapter XX, division B (authorizing legislation); 45 CFR 75.342 (monitoring and reporting program performance); 45 CFR 75.301 (performance measurement); and the GPRA Modernization Act of 2010 (Pub. L. 111–352, sec. 12). The collection of program performance data is required for all ACL grantees, including grants authorized by the OAA and EJA, to: (1) monitor achievement of program performance objectives; (2) identify areas of performance that may benefit from technical assistance and/or corrective action; 3) establish program policy and direction; and (4) prepare responses and reports for Congress, the Office of Management and Budget (OMB), other federal departments, and public and private agencies, including legislatively required reports.

ACL consistently looks for ways to streamline the collection of required program performance data. The proposed *ACL Program Performance Report Generic Information Collection* would provide an efficient mechanism for the collection of a core set of program performance data elements across OAA and EJA authorized programs necessary to ensure each programs indicators, demographics, priorities, and objectives are being achieved. The collection of this core set of performance elements will enable ACL to analyze program performance broadly across its grantee portfolio, while minimizing grantee reporting burden. Program offices will be given the opportunity to submit, for review and approval under this generic clearance, PPRs for their programs that address the core program performance elements.

Comments in Response to the 60-Day Federal Register Notice

A 60-day notice published in the **Federal Register** on December 5, 2023, at 88 FR 84335. ACL received two public comments. A summary of the comments and the ACL response is provided below:

Comment One: Suggest including more specific instructions for completing the elements in the proposed ACL PPR template.

ACL response: While ACL appreciates this suggestion, the instructions for

completing the elements must be somewhat broad to account for differences in the goals, objectives, and activities across the programs.

Comment Two: Request confirmation that the grantee will be responsible for submitting a comprehensive PPR each reporting period to ACL (as opposed to having grantees' subcontractors *each* submit individual reports to ACL).

ACL response: Although grantees could work with their subcontractors to gather information to complete their PPR, grantees would be responsible for submitting a comprehensive PPR to ACL for the specified reporting period.

Estimated Program Burden

ACL estimated total annual burden for this generic IC is 50,223.60 hours. This estimate is based on the current number of grantees for the OAA and EJA programs below, consideration of the program performance information necessary to ensure adequate progress toward program goals, and previous experience with program performance reporting.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
State Formula Grantees	112	1	70.3	7,873.60
Tribal Formula Grantees	282	1	60	16,920
Competitive Grantees	1,189	2	10	23,780
Veteran Organization Competitive Grantees	275	12	0.5	1,650
Total Annual Hours				50,223.60

Dated: March 19, 2024.

Alison Barkoff,

Principal Deputy Administrator for the Administration for Community Living, performing the delegable duties of the Administrator and the Assistant Secretary for Aging.

[FR Doc. 2024–06208 Filed 3–22–24; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3615]

Martin Valdes: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debarring Martin Valdes, M.D., from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Valdes was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product under the FD&C Act. Dr. Valdes was given notice of the proposed permanent debarment and an opportunity to request a hearing to show why he should not be debarred. As of January 7, 2023 (30 days after receipt of the notice), Dr. Valdes had not responded. Dr. Valdes's failure to respond and request a hearing within the prescribed timeframe constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is applicable March 25, 2024.

ADDRESSES: Any application by Dr. Valdes for special termination of debarment under section 306(d)(4) of the FD&C Act (21 U.S.C. 335a(d)(4)) may be submitted at any time as follows:

Electronic Submissions

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. An application submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your application, that information will be posted on *https://www.regulations.gov.*
- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All applications must include the Docket No. FDA–2023–N–3615. Received applications will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit an application with confidential information that you do not wish to be made publicly available, submit your application only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of your application. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://*

www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.

Docket: For access to the docket, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Compliance and Enforcement, Office of Policy, Compliance, and Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 240–402–8743, *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(A) of the FD&C Act requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product. On August 18, 2023, Dr. Valdes was convicted as defined in section 306(l)(1) of the FD&C Act, in the U.S. District Court for the Southern District of Florida-Miami Division, when the court entered judgment against him, after a jury trial, for one count of False Statements in violation of 18 U.S.C. 1001(a)(2).

The underlying facts supporting the conviction are as follows: As contained in the Indictment, entered into the docket on February 24, 2021, and as contained in the Acceptance of Responsibility signed by Dr. Valdes and entered into the docket on July 31, 2023, Dr. Valdes was a Florida licensed medical doctor. From in or about September 2013 and continuing through in or about May 2016, Dr. Valdes was the principal investigator responsible for conducting clinical research trials at Tellus Clinical Research, Inc. (Tellus). Tellus was a medical research clinic located in Miami, Florida, that conducted clinical trials on behalf of pharmaceutical company sponsors. Among the clinical research trials conducted by Tellus were two studies of an investigational drug intended to treat irritable bowel syndrome in subjects (collectively, IBS trials). On or about April 6, 2016, Dr. Valdes was interviewed by an FDA investigator. During that interview, Dr. Valdes knowingly and willfully made a false statement and/or representation; namely, that Dr. Valdes personally performed a physical examination on each subject of the IBS trials for which his signature appeared on the subject's case history form, when in fact he had not conducted such a physical examination on each subject.

As a result of this conviction, FDA sent Dr. Valdes by certified mail on December 4, 2023, a notice proposing to debar him permanently from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(A) of the FD&C Act, that Dr. Valdes was convicted, as set forth in section 306(l)(1) of the FD&C Act, of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product. The proposal also offered Dr. Valdes an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted an election not to use the opportunity for a hearing and a waiver of any contentions concerning this action. Dr. Valdes received the proposal on December 8, 2023. Dr. Valdes did not request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(a)(2)(A) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Dr. Valdes has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product under the FD&C Act.

As a result of the foregoing finding, Dr. Valdes is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(A) and (c)(2)(A)(ii) of the FD&C Act). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Valdes in any capacity during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Valdes provides services in any capacity to a person with an approved or pending drug product application during his period of debarment, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug application from Dr. Valdes during his period of debarment, other than in connection with an audit under section 306(c)(1)(B) of the FD&C Act. Note that, for purposes of sections 306 and 307 of the FD&C Act, a ''drug product'' is defined as a drug subject to regulation under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262) (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd)).

Dated: March 20, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06242 Filed 3–22–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meetings of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that an in-person meeting is scheduled to be held for the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB). The meeting will be open to the public as well as streamed live on *hhs.gov/live.* A pre-registered public comment and innovation spotlight session will be held during the meeting. Pre-registration is required for members of the public who wish to present their comments or innovations live during the meeting. Individuals who wish to send in their written public comment should send an email to *CARB@hhs.gov.* Registration information is available on the website *http://www.hhs.gov/paccarb* and must be completed by May 16, 2024, to attend the May 21–22, 2024, public meeting or by May 14, 2024, to provide live comments at the meeting. Additional information about registering for the meeting and providing public comment can be obtained at *http://www.hhs.gov/*

paccarb on the Upcoming Meetings page.

DATES: The meeting is scheduled to be held on May 21–22, 2024, from 9 a.m. to 4 p.m. ET (times are tentative and subject to change). The confirmed times and agenda items for the meeting will be posted on the website for the PACCARB at *http://www.hhs.gov/paccarb* when this information becomes available. Pre-registration for attending the meeting is strongly suggested and should be completed no later than May 16, 2024.

ADDRESSES: The meeting will be held in-person at the Westin Tyson's Corner, 7801 Leesburg Pike, Falls Church, VA, 22043. The meeting will also be live streamed and can be accessed through a live webcast on the day of the meeting. Additional instructions regarding attending this meeting virtually will be posted at least one week prior to the meeting at: *https://www.hhs.gov/paccarb.*

FOR FURTHER INFORMATION CONTACT: Jomana Musmar, M.S., Ph.D., Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, 1101 Wootton Parkway, Rockville, MD 20852. Phone: 202–746–1512; Email: *CARB@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB), established by Executive Order 13676, is continued by Section 505 of Public Law 116–22, the Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019 (PAHPAIA). Activities and duties of the PACCARB are governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

The PACCARB shall advise and provide information and recommendations to the Secretary of Health and Human Services (Secretary) regarding programs and policies intended to reduce or combat antibiotic-resistant bacteria that may present a public health threat and improve capabilities to prevent, diagnose, mitigate, or treat such resistance. The PACCARB shall function solely for advisory purposes.

Such advice, information, and recommendations may be related to improving: the effectiveness of antibiotics; research and advanced research on, and the development of, improved and innovative methods for combating or reducing antibiotic resistance, including new treatments, rapid point-of-care diagnostics, alternatives to antibiotics, including alternatives to animal antibiotics, and antimicrobial stewardship activities; surveillance of antibiotic-resistant bacterial infections, including publicly available and up-to-date information on resistance to antibiotics; education for health care providers and the public with respect to up-to-date information on antibiotic resistance and ways to reduce or combat such resistance to antibiotics related to humans and animals; methods to prevent or reduce the transmission of antibiotic-resistant bacterial infections; including stewardship programs; and coordination with respect to international efforts in order to inform and advance the United States capabilities to combat antibiotic resistance.

The focus of the May 21–22, 2024, meeting will be to deliberate and vote on the Global Antimicrobial Resistance Working Group report to the Secretary of Health and Human Services. The remainder of the public meeting will include updates on AMR in conflict zones, the environment, and the voice of the patient. The meeting agenda will be posted on the PACCARB website at *http://www.hhs.gov/paccarb* when it has been finalized. All agenda items are tentative and subject to change. Instructions regarding attending the meeting virtually will be posted at least one week prior to the meeting at: *http://www.hhs.gov/paccarb.* Members of the public will have the opportunity to provide comments during the May meeting by pre-registering online at *https://www.hhs.gov/paccarb;* pre-registration is required for participation in this session with limited spots available. Written public comments can also be emailed to *CARB@hhs.gov* by midnight May 14, 2024, and should be limited to no more than one page. All public comments received prior to May 14, 2024, will be provided to the PACCARB members. Additionally, companies or organizations working to combat antimicrobial resistance my share their innovation during the May meeting by pre-registering to speak during the meeting's Innovation Spotlight. Pre-registration online at *http://www.hhs.gov/paccarb* is required for participation in this session, and limited spots are available.

Dated: March 14, 2024.

Jomana F. Musmar,

Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health.

[FR Doc. 2024–06157 Filed 3–22–24; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Membership on the Secretary's Advisory Committee on Human Research Protections; Correction

AGENCY: Office of the Assistant Secretary for Health, Office for Infectious Disease and HIV/AIDS Policy, Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Notice; correction.

SUMMARY: HHS published a document in the **Federal Register** of March 12, 2024, announcing the Presidential Advisory Council on HIV/AIDS (PACHA) 80th full council meeting. Due to unforeseen circumstances, there has been an update in meeting location.

FOR FURTHER INFORMATION CONTACT: Caroline Talev, *caroline.talev@hhs.gov,* (202) 795–7622.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 12, 2024, in FR Doc. 2024–05183, on page 17859, third column, correct the **ADDRESSES** caption to read:

ADDRESSES: The public meeting will now be held at the UT School of Public Health, 1200 Pressler Street in Houston, Texas 77030. To attend the meeting virtually, please visit *www.hhs.gov/live.*

Dated: March 20, 2024.

Caroline Talev,

Senior Management Analyst, Office of Infectious Disease and HIV/AIDS Policy, Alternate Designated Federal Officer, Presidential Advisory Council on HIV/AIDS, Office of the Assistant Secretary for Health, Department of Health and Human Services.

[FR Doc. 2024–06362 Filed 3–21–24; 4:15 pm]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: May 10, 2024.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Plaza Lord Baltimore, 20 West Baltimore Street, Hanover, Suite B, Baltimore, MD 21201 (Hybrid Meeting).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, 301–402–0838, *barbara.thomas@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 20, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06240 Filed 3–22–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Cancer Therapy Evaluation Program (CTEP) Branch and Support Contracts Forms and Surveys (NCI); Correction

AGENCY: National Institutes of Health, HHS.

ACTION: Notice; correction.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or using the search function.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Michael Montello, Cancer Therapy Evaluation Program—DCTD, National Cancer Institute, 9609 Medical Center Drive, Rockville, Maryland 20850 or call non-toll-free number (240) 276–6080 or email your request, including your address to: *montellom@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on March 8, 2024, page 16776 (89 FR 16776) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection Title: Cancer Therapy Evaluation Program (CTEP) Branch and Support Contracts Forms and Surveys (NCI), 0925–0753, Expiration Date 03/31/2026, REVISION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This is a request for OMB to approve the revised information collection, Cancer Therapy Evaluation Program (CTEP) Support Contracts Forms and Survey. It includes modifications to OMB-approved forms for the CTSU and CIRB and the addition of new forms for the CTSU, CIRB, and CTEP. The National Cancer Institute (NCI) CTEP and the Division of Cancer Prevention (DCP) fund an extensive national program of cancer research, sponsoring clinical trials in cancer prevention, symptom management, and treatment for qualified clinical investigators. As part of this effort, CTEP implements programs to register clinical site investigators and clinical site staff and to oversee the conduct of research at the clinical sites. CTEP and DCP also oversee two support programs, the NCI Central Institutional Review Board (CIRB) and the Cancer Trial Support Unit (CTSU). The combined systems and processes for initiating and managing clinical trials are termed the Clinical Oncology Research Enterprise (CORE) and represent an integrated set of information systems and processes that support investigator registration, trial oversight, patient enrollment, and clinical data collection. The information collected is required to ensure compliance with applicable federal regulations governing the conduct of human subjects' research (45 CFR 46 and 21 CFF 50), and when CTEP acts as the Investigational New Drug (IND) holder (Food and Drug Administration (FDA) regulations pertaining to the sponsor of clinical trials and the selection of qualified investigators under 21 CFR 312.53). Survey collections assess satisfaction and provide feedback to guide improvements with processes and technology.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 162,836 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
CTSU IRB/Regulatory Approval Transmittal Form (Attachment A01).	Health Care Practitioner	2,444	12	2/60	978
CTSU IRB Certification Form (Attachment A02) ..	Health Care Practitioner	2,444	12	10/60	4,888
Withdrawal from Protocol Participation Form (Attachment A03).	Health Care Practitioner	279	1	10/60	47
Site Addition Form (Attachment A04)	Health Care Practitioner	80	12	10/60	160
CTSU Request for Clinical Brochure (Attachment A06).	Health Care Practitioner	360	1	10/60	60
CTSU Supply Request Form (Attachment A07) ..	Health Care Practitioner	90	12	10/60	180
RTOG 0834 CTSU Data Transmittal Form (Attachment A10).	Health Care Practitioner	30	2	5/60	5
CTSU Patient Enrollment Transmittal Form (Attachment A15).	Health Care Practitioner	12	12	10/60	24
CTSU Transfer Form (Attachment A16)	Health Care Practitioner	360	2	10/60	120
CTSU OPEN Rave Request Form (Attachment A18).	Health Care Practitioner	30	21	10/60	105
CTSU LPO Form Creation (Attachment A19)	Health Care Practitioner	5	2	120/60	20
CTSU Site Form Creation and PDF (Attachment A20).	Health Care Practitioner	400	10	30/60	2,000
CTSU PDF Signature Form (Attachment A21)	Health Care Practitioner	400	10	10/60	667
CTSU CLASS Course Setup Request Form (Attachment A22).	Health Care Practitioner	10	2	20/60	7
CTSU LPO Approval of Early Closure Form (Attachment A23).	Health Care Practitioner	2,444	6	20/60	4,888
International DTL Signing (Attachment 24)	Health Care Practitioner	29	1	10/60	5
NCI CIRB AA & DOR between the NCI CIRB and Signatory Institution (Attachment B01).	Participants	50	1	15/60	13
NCI CIRB Signatory Enrollment Form (Attachment B02).	Participants	50	1	15/60	13
CIRB Board Member Application (Attachment B03).	Board Member	100	1	30/60	50
CIRB Member COI Screening Worksheet (Attachment B08).	Board Members	100	1	15/60	25
CIRB COI Screening for CIRB meetings (Attachment B09).	Board Members	72	1	15/60	18
CIRB IR Application (Attachment B10)	Health Care Practitioner	80	1	60/60	80
CIRB IR Application for Exempt Studies (Attachment B11).	Health Care Practitioner	4	1	30/60	2
CIRB Amendment Review Application (Attachment B12).	Health Care Practitioner	400	1	15/60	100
CIRB Ancillary Studies Application (Attachment B13).	Health Care Practitioner	1	1	60/60	1
CIRB Continuing Review Application (Attachment B14).	Health Care Practitioner	400	1	15/60	100
Adult IR of Cooperative Group Protocol (Attachment B15).	Board Members	65	1	180/60	195
Pediatric IR of Cooperative Group Protocol (Attachment B16).	Board Members	15	1	180/60	45
Adult Continuing Review of Cooperative Group Protocol (Attachment B17) Protocol.	Board Members	275	1	60/60	275
Adult Amendment of Cooperative Group Protocol (Attachment B19).	Board Members	40	1	120/60	80
Pediatric Amendment of Cooperative Group Protocol (Attachment B20).	Board Members	25	1	120/60	50
Pharmacist's Review of a Cooperative Group Study (Attachment B21).	Board Members	50	1	120/60	100
Adult Expedited Amendment Review (Attachment B23).	Board Members	348	1	30/60	174
Pediatric Expedited Amendment Review (Attachment B24).	Board Members	140	1	30/60	70
Adult Expedited Continuing Review (Attachment B25).	Board Members	140	1	30/60	70
Pediatric Expedited Continuing Review (Attachment B26).	Board Members	36	1	30/60	18
Adult Cooperative Group Response to CIRB Review (Attachment B27).	Health Care Practitioner	30	1	60/60	30
Pediatric Cooperative Group Response to CIRB Review (Attachment B28).	Health Care Practitioner	5	1	60/60	5

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Adult Expedited Study Chair Response to Required Modifications (Attachment B29).	Board Members	40	1	30/60	20
Reviewer Worksheet—Determination of UP or SCN (Attachment B31).	Board Members	400	1	10/60	67
Reviewer Worksheet—CIRB Statistical Reviewer Form (Attachment B32).	Board Members	100	1	15/60	25
CIRB Application for Translated Documents (Attachment B33).	Health Care Practitioner	100	1	30/60	50
Reviewer Worksheet of Translated Documents (Attachment B34).	Board Members	100	1	15/60	25
Reviewer Worksheet of Recruitment Material (Attachment B35).	Board Members	20	1	15/60	5
Reviewer Worksheet Expedited Study Closure Review (Attachment B36).	Board Members	20	1	15/60	5
Reviewer Worksheet of Expedited IR (Attachment B38).	Board Members	5	1	30/60	3
Annual Signatory Institution Worksheet About Local Context (Attachment B40).	Health Care Practitioner	400	1	40/60	267
Annual Principal Investigator Worksheet About Local Context (Attachment B41).	Health Care Practitioner	1,800	1	20/60	600
Study-Specific Worksheet About Local Context (Attachment B42).	Health Care Practitioner	4,800	1	15/60	1,200
Study Closure or Transfer of Study Review Responsibility (Attachment B43).	Health Care Practitioner	1,680	1	15/60	420
Unanticipated Problem or Serious or Continuing Noncompliance Reporting Form (Attachment B44).	Health Care Practitioner	360	1	20/60	120
Change of Signatory Institution PI Form (Attachment B45).	Health Care Practitioner	120	1	20/60	40
Request Waiver of Assent Form (Attachment B46).	Health Care Practitioner	35	1	20/60	12
CIRB Waiver of Consent Request Supplemental Form (Attachment B47).	Health Care Practitioner	20	1	15/60	5
Review Worksheet CIRB Review for Inclusion of Incarcerated Participants (Attachment B48).	Board Members	20	1	60/60	20
Notification of Incarcerated Participant Form (Attachment B49).	Health Care Practitioner	20	1	20/60	7
Final Video Submission Posting Form (Attachment B50).	Health Care Practitioner	80	1	15/60	20
Unanticipated Problem or Serious or Continuing Noncompliance Application (Attachment B52).	Health Care Practitioner	20	1	30/60	10
CIRB Customer Satisfaction Survey (Attachment C04).	Participants	600	1	15/60	150
Follow-up Survey (Communication Audit) (Attachment C05).	Participants/Board Members.	300	1	15/60	75
CIRB Board Member Annual Assessment Survey (Attachment C07).	Board Members	60	1	15/60	15
PIO Customer Satisfaction Survey (Attachment C08).	Health Care Practitioner	60	1	5/60	5
Audit Scheduling Form (Attachment D01)	Health Care Practitioner	229	5	21/60	401
Preliminary Audit Finding Form (Attachment D02)	Health Care Practitioner	229	5	10/60	191
Audit Maintenance Form (Attachment D03)	Health Care Practitioner	158	5	9/60	119
Final Audit finding Report Form (Attachment D04).	Health Care Practitioner	110	11	1,098/60	22,143
Follow-up Form (Attachment D05)	Health Care Practitioner	44	7	27/60	139
Roster Maintenance Form (Attachment D06)	Health Care Practitioner	7	1	18/60	2
Final Report and CAPA Request Form (Attachment D07).	Health Care Practitioner	3	9	1,800/60	810
NCI/DCTD/CTEP FDA Form 1572 for Annual Submission (Attachment E01).	Physician	26,500	1	15/60	6,625
NCI/DCTD/CTE Biosketch (Attachment E02)	Physician; Health Care Practioner.	48,000	1	120/60	96,000
NCI/DCTD/CTEP Financial Disclosure Form (Attachment E03).	Physician; Health Care Practioner.	48,000	1	15/60	12,000
NCI/DCTD/CTEP Agent Shipment Form (ASF) (Attachment E04).	Physician	24,000	1	10/60	4,000
NINT Registration Form?	Health Care Practitioner, Other.	1,000	1	60/60	1,000
ISS Form	Physician	2,100	1	15/60	525

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Basic Study Information Form (Attachment TBD)	Health Care Practioner	140	1	20/60	47
Totals		173,523	253,570		162,836

Dated: March 20, 2024.

Diane Kreinbrink,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2024–06233 Filed 3–22–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute On Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA Board of Scientific Council, NIA.

Date: May 29–31, 2024.

Closed: May 29, 2024, 8:00 a.m. to 8:45 a.m.

Agenda: To review and evaluate executive Session; Opening Remarks, (Richard J. Hodes, M.D., NIA Director, and Luigi Ferrucci, M.D., Ph.D., Scientific Director, NIA); Board Business, (Andrea LaCroix, Ph.D., Chairperson, and Holly M. Brown-Borg, Ph.D., Incoming Chairperson).

Place: National Institute on Aging, Biomedical Research Center, 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 29, 2024, 8:45 a.m. to 9:45 a.m.

Agenda: Bias in the Review Process Presentation (Marie Bernard, M.D., Chief Officer for Scientific Workforce Diversity, NIH).

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 29, 2024, 9:45 a.m. to 10:00 a.m.

Agenda: Break.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 29, 2024, 10:00 a.m. to 10:15 a.m.

Agenda: LBN Overview (Susan Resnick, Ph.D., Laboratory Chief, Senior Investigator, LBN).

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 29, 2024, 10:15 a.m. to 10:30 a.m.

Agenda: Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 29, 2024, 10:30 a.m. to 11:00 a.m.

Agenda: A historical perspective on BABS brain and cognitive aging studies: Setting the stage for the future (Susan Resnick, Ph.D., Laboratory Chief, Senior Investigator, LBN).

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 29, 2024, 11:00 a.m. to 11:30 a.m.

Agenda: Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 29, 2024, 11:30 a.m. to 11:45 a.m.

Agenda: To review and evaluate Dr. Resnick meets individually and privately with BSC members.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 29, 2024, 11:45 a.m. to 12:00 p.m.

Agenda: Break.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 29, 2024, 12:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate executive Session Luncheon.

Place: National Institute on Aging, Biomedical Research Center, 3A519/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 29, 2024, 1:30 p.m. to 2:00 p.m.

Agenda: Integrating omics and neuroimaging to identify ADRD risk factors, biomarkers, and therapeutic targets (Keenan Walker, Ph.D., NIH Distinguished Scholar, Tenure-Track Investigator, LBN).

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 29, 2024, 2:00 p.m. to 2:30 p.m.

Agenda: Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 29, 2024, 2:30 p.m. to 3:00 p.m.

Agenda: Target discovery, preclinical validation, and clinical translation of novel Alzheimer's therapies (Madhav Thambisetty, M.D., Ph.D., Senior Investigator (Clinical), LBN).

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 29, 2024, 3:00 p.m. to 3:30 p.m.

Agenda: Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 29, 2024, 3:30 p.m. to 3:45 p.m.

Agenda: Break.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 29, 2024, 3:45 p.m. to 4:00 p.m.

Agenda: Drs. Walker and Thambisetty meet individually and privately with BSC members.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 29, 2024, 4:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate executive Session (Biomedical Research Center, 3rd Floor, Room 3C211/Virtual).

Place: National Institute on Aging, Biomedical Research Center, 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 29, 2024, 5:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate adjourn.

Place: National Institute on Aging, Biomedical Research Center, 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 30, 2024, 8:00 a.m. to 8:30 a.m.

Agenda: To review and evaluate executive Session—Opening Remarks, (Richard J. Hodes, M.D., NIA Director, and Luigi Ferrucci, M.D., Ph.D., Scientific Director,

NIA), Board Business, (Andrea LaCroix, Ph.D., Chairperson, and Holly M. Brown-Borg, Ph.D., Incoming Chairperson).

Place: National Institute on Aging, Biomedical Research Center, 3C227/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 30, 2024, 8:30 a.m. to 9:00 a.m.

Agenda: Imaging meso- and microscopic neuropathology in aging using MRI (Dan Benjamini, Ph.D., Earl Stadtman-Tenure Track Investigator, LBN).

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 30, 2024, 9:00 a.m. to 9:30 a.m.

Agenda: Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 30, 2024, 9:30 a.m. to 9:45 a.m.

Agenda: Break.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 30, 2024, 9:45 a.m. to 10:15 a.m.

Agenda: Neurocognitive aging and resilience: Systems and circuits in preclinical animal models (Peter Rapp, Ph.D., Senior Investigator, LBN).

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 30, 2024, 10:15 a.m. to 10:45 a.m.

Agenda: To review and evaluate drs. Benjamini and Rapp meet individually and privately with BSC members.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 30, 2024, 11:00 a.m. to 11:15 a.m.

Agenda: Break.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 30, 2024, 11:15 a.m. to 12:30 p.m.

Agenda: To review and evaluate executive Session Luncheon.

Place: National Institute on Aging, Biomedical Research Center, 3A519/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 30, 2024, 12:30 p.m. to 12:45 p.m.

Agenda: To review and evaluate laboratory/Branch Chief Leadership Overview (Susan Resnick, Ph.D., Laboratory Chief, Senior Investigator, LBN).

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 30, 2024, 12:45 p.m. to 1:00 p.m.

Agenda: To review and evaluate discussion with the Laboratory/Branch Chief.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 30, 2024, 1:00 p.m. to 1:15 p.m.

Agenda: To review and evaluate leadership Review Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 30, 2024, 1:15 p.m. to 2:00 p.m.

Agenda: Break.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 30, 2024, 2:00 p.m. to 2:45 p.m.

Agenda: To review and evaluate BSC members to meet with Fellows from LBN.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 30, 2024, 2:45 p.m. to 3:15 p.m.

Agenda: Novel insights into neurodegeneration through long-read sequencing- (Cornelis Blauwendraat, Ph.D., Earl Stadtman Tenure-Track Investigator, Laboratory of Neurogenetics (LNG)).

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 30, 2024, 3:15 p.m. to 3:45 p.m.

Agenda: Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 30, 2024, 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate executive Session.

Place: National Institute on Aging, Biomedical Research Center, 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 30, 2024, 5:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate adjourn.

Place: National Institute on Aging, Biomedical Research Center, 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 31, 2024, 8:00 a.m. to 8:30 a.m.

Agenda: To review and evaluate executive Session—Opening Remarks, (Richard J. Hodes, M.D., NIA Director, and Luigi Ferrucci, M.D., Ph.D., Scientific Director, NIA); Board Business, (Andrea LaCroix, Ph.D., Chairperson, and Holly M. Brown-Borg, Ph.D., Incoming Chairperson).

Place: National Institute on Aging, Biomedical Research Center, 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 31, 2024, 8:30 a.m. to 8:45 a.m.

Agenda: LEPS Overview (Lenore Launer, Ph.D., Laboratory Chief, Senior Investigator, LBN).

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 31, 2024, 8:45 a.m. to 9:00 a.m.

Agenda: Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 31, 2024, 9:00 a.m. to 9:30 a.m.

Agenda: Creating conditions for dementia (Lenore Launer, Ph.D., Laboratory Chief, Senior Investigator, LEPS).

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 31, 2024, 9:30 a.m. to 10:00 a.m.

Agenda: Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 31, 2024, 10:00 a.m. to 10:15 a.m.

Agenda: Break.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 31, 2024, 10:15 a.m. to 10:45 a.m.

Agenda: The biological influences of social determinants of health: challenges, surprises, and complexities (Michele K. Evans, M.D., Senior Investigator (Clinical), LEPS).

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 31, 2024, 10:45 a.m. to 11:15 a.m.

Agenda: Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 31, 2024, 11:30 a.m. to 11:45 a.m.

Agenda: Break.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 31, 2024, 11:45 a.m. to 1:00 p.m.

Agenda: To review and evaluate executive Session Luncheon.

Place: National Institute on Aging, Biomedical Research Center, 3A519/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 31, 2024, 1:00 p.m. to 1:15 p.m.

Agenda: To review and evaluate laboratory/Branch Chief Leadership Overview (Lenore Launer, Ph.D., Laboratory Chief, Senior Investigator, LEPS).

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 31, 2024, 1:15 p.m. to 1:30 p.m.

Agenda: To review and evaluate discussion with the Laboratory/Branch Chief.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 31, 2024, 1:30 p.m. to 1:45 p.m.

Agenda: To review and evaluate leadership Review Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Closed: May 31, 2024, 1:45 p.m. to 2:30 p.m.

Agenda: To review and evaluate BalySC members to meet with Fellows from LEPS.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 31, 2024, 2:30 p.m. to 2:45 p.m.

Agenda: Break.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).

Open: May 31, 2024, 2:45 p.m. to 3:00 p.m.
Agenda: Whole-genome sequencing in non-Alzheimer dementias: Progress, opportunities, and request for cloud resources (Concept) (Bryan J. Traynor, M.D., Ph.D., Senior Investigator, LNG).
Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).
Open: May 31, 2024, 3:00 p.m. to 3:15 p.m.
Agenda: Discussion.
Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).
Closed: May 31, 2024, 3:15 p.m. to 4:30 p.m.
Agenda: To review and evaluate executive Session (Final discussion of all Principal Investigators reviewed on all days.).
Place: National Institute on Aging, Biomedical Research Center, 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).
Closed: May 31, 2024, 4:30 p.m. to 4:30 p.m.
Agenda: To review and evaluate adjourn.
Place: National Institute on Aging, Biomedical Research Center, 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (Hybrid).
Contact Person: Luigi Ferrucci, M.D., Ph.D., Scientific Director, National Institute on Aging, 251 Bayview Boulevard, Suite 100, Room 4C225, Baltimore, MD 21224, 410–558–8110, *LF27Z@NIH.GOV*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 19, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06147 Filed 3–22–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Career Development K-Awards, March 28, 2024, 11 a.m. to 3 p.m., National Institutes of Health, Rockledge 1, 6705 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on February 20, 2024, FR Doc 2024–03384, 89 FR 12850.

The meeting is being amended due to a change in time from 11 a.m.–3 p.m. to 10:30 a.m.–2:30 p.m. This meeting format will be a video assisted, and is closed to the public in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6).

Dated: March 19, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06227 Filed 3–22–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Computational and other Technologies.
Date: April 11, 2024.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 6188, MSC 7804, Bethesda, MD 20892, 301–435–1267, *belangerm@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 19, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06215 Filed 3–22–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2024 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services (HHS).

ACTION: Notice of intent to award a single source cooperative agreement to the Community-Based, Advocacy-Focused, Data-Driven, Coalition-Building Association (CADCA).

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award up to $675,000 per year for up to five (5) years to the Community-Based, Advocacy-Focused, Data-Driven, Coalition-Building Association (CADCA). The purpose of the award is to leverage existing resources to expand SAMHSA's scope and prevention capacity; provide training and technical assistance to state and community prevention leaders, including members of anti-drug community coalitions from around the country who are committed to addressing the evolving needs of the behavioral health field; and to promote prevention workforce development. The training and workforce development activities supported through this cooperative agreement include SAMHSA's Prevention Day and SAMHSA's participation in the annual National Leadership Forum, the annual Mid-Year Training Institute of CADCA, and developing youth leaders across the three conferences/events listed above.

FOR FURTHER INFORMATION CONTACT: David Lamont Wilson, Public Health Analyst, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone 240–276–2588; email: *david.wilson@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: FY 2024 National Anti-Drug Coalitions Training and Workforce Development Cooperative Agreement (Short Title: Coalitions Training Cooperative Agreement), Notice of Funding Opportunity SP–24–003.
Assistance Listing Number: 93.243.
Authority: The Coalitions Training Cooperative Agreement is authorized under sections 509, 516 and 520A of the Public Health Service Act, as amended.
Justification: Eligibility for this funding is limited to CADCA. CADCA is

the only national organization that provides training and technical assistance annually through a national leadership conference for thousands of members of community coalitions dedicated to preventing substance use. CADCA is currently the sole organization that plays a major role in helping to strengthen and develop the nation's prevention infrastructure of anti-drug coalitions in support of ongoing activities funded by SAMHSA's priority prevention grant programs. It is the only identified organization that currently meets this experience level to successfully implement this grant and has a national reach to over 5,000 identified anti-drug coalitions across the country. This is not a formal request for application. Funding will only be provided to CADCA based on the receipt of a satisfactory application and associated budget that is approved by a review group.

Dated: March 20, 2024.

Ann Ferrero,

Public Health Analyst.

[FR Doc. 2024–06229 Filed 3–22–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0022]

Agency Information Collection Activities; Revision; Entry Summary (CBP Form 7501)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than April 24, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Please write comments and/or suggestions in English. 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (88 FR 24203) on April 19, 2023, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Entry Summary.
OMB Number: 1651–0022.
Form Number: 7501.
Current Actions: Revision.
Type of Review: Revision.
Affected Public: Importer, importer's agent for each import transaction.

Abstract: CBP Form 7501, *Entry Summary,* is used to identify merchandise entering the commerce of the United States, and to document the amount of duty and/or tax paid. CBP Form 7501 is submitted by the importer, or the importer's agent, for each import transaction. The data on this form is used by CBP as a record of the import transaction; to collect the proper duty, taxes, certifications, and enforcement information; and to provide data to the U.S. Census Bureau for statistical purposes. CBP Form 7501 must be filed within 10 working days from the time of entry of merchandise into the United States. Collection of the data on this form is authorized by 19 U.S.C. 1484 and provided for by 19 CFR 141.61 and 19 CFR 142.11. CBP Form 7501 and accompanying instructions can be found at: *https://www.cbp.gov/newsroom/publications/forms?title_1=7501*.

New Change

CBP is proposing to add the following required data fields to Form 7501:

- For certain Harmonized Tariff Schedule (HTS) classifications of steel imports, the country where the steel used in the manufacture of the product was melted and poured; the country where the steel used in the manufacture of the product was melted and poured applies to the original location where the raw steel is first produced in a steel-making furnace in a liquid state; and then poured into its first solid shape.
- For certain HTS classifications of aluminum imports, the countries where the largest and second largest volume of primary aluminum used in the manufacture of the imported aluminum product was smelted; and the country where the aluminum used in the imported aluminum product was most recently cast. The fields requiring identification of the countries where the largest volume of primary aluminum used in the manufacture of the product was smelted applies to the country where the largest volume of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall-Héroult process. Importers may be required to report if primary aluminum from specific countries is used in the imported

aluminum product, if required by law and/or Presidential Proclamation.[1]

- Importers will be required to report on the Form 7501 the steel country of melt and pour and aluminum countries of smelt and cast for imports under those steel and aluminum HTS classifications subject to the Commerce Department's steel and aluminum import license applications, and where applicable, the section 232 steel and aluminum measures.

These data fields will substantially align the Form 7501 reporting requirements with the Commerce Department's existing reporting requirements for steel melt and pour and aluminum smelt and cast countries for steel and aluminum import license applications under 19 CFR 360.103(c)(1) and 19 CFR 361.103(c)(1). The aluminum and steel license application information is used by the Commerce Department for monitoring of anticipated imports of certain aluminum and steel products into the United States. The Form 7501 data is used by CBP to determine, when imports are entered for consumption, the proper amount of duties, applicable fees, taxes, and imports subject to quota.

These data fields are also required to enforce the tariff rate quotas for imported steel and aluminum established by the following Presidential Proclamations under section 232 of the Trade Expansion Act of 1962, as amended: for products of the European Union, Proclamation 10327 of December 27, 2021 (87 FR 1, January 3, 2022) and Proclamation 10328 of December 27, 2021 (87 FR 11, January 3, 2022); for products of Japan (steel-only), Proclamation 10356 of March 31, 2022 (87 FR 19351, April 1, 2022); and for products of the United Kingdom, Proclamation 10405 of May 31, 2022 (87 FR 33583, June 3, 2022) and Proclamation 10406 of May 31, 2022 (87 FR 33591, June 3, 2022).

Type of Information Collection: 7501 Formal Entry (Electronic submission).

Estimated Number of Respondents: 2,336.

Estimated Number of Annual Responses per Respondent: 9,903.

Estimated Number of Total Annual Responses: 23,133,408.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 1,920,073.

Type of Information Collection: 7501 Formal Entry (Paper Submission).

Estimated Number of Respondents: 28.

Estimated Number of Annual Responses per Respondent: 9,903.

Estimated Number of Total Annual Responses: 277,284.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 92,336.

Type of Information Collection: 7501 Formal Entry w/Softwood Lumber Act of 2008 (Paper Only).

Estimated Number of Respondents: 210.

Estimated Number of Annual Responses per Respondent: 1,905.

Estimated Number of Total Annual Responses: 400,050.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 266,433.

Type of Information Collection: 7501 Informal Entry (Electronic Submission).

Estimated Number of Respondents: 1,883.

Estimated Number of Annual Responses per Respondent: 2,582.

Estimated Number of Total Annual Responses: 4,861,906.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 403,538.

Type of Information Collection: 7501 Informal Entry (Paper Submission).

Estimated Number of Respondents: 19.

Estimated Number of Annual Responses per Respondent: 2,582.

Estimated Number of Total Annual Responses: 49,058.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 12,265.

Type of Information Collection: 7501A Document/Payment Transmittal (Paper Only).

Estimated Number of Respondents: 20.

Estimated Number of Annual Responses per Respondent: 60.

Estimated Number of Total Annual Responses: 1,200.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 300.

Type of Information Collection: Exclusion Approval Information Letter.

Estimated Number of Respondents: 5,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 5,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 250.

Dated: March 20, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–06255 Filed 3–22–24; 8:45 am]

BILLING CODE P

[1] The February 24, 2023 Presidential Proclamation on Adjusting Imports of Aluminum Into the United States requires importers to provide to CBP information necessary to identify the countries where the primary aluminum used in the manufacture of certain imports of aluminum articles are smelted and information necessary to identify the countries where such aluminum articles imports are cast. This notice proposes to add the aluminum smelt and cast data field to Form 7501 independently from the February 24, 2023 Proclamation.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0138]

Agency Information Collection Activities; Revision; Biometric Identity

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than May 24, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0138 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information

provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Biometric Identity.
OMB Number: 1651–0138.
Form Number: N/A.
Current Actions: Revision.
Type of Review: Revision.
Affected Public: Individuals.
Abstract: In order to enhance national security, the Department of Homeland Security is developing a biometric based entry and exit system capable of improving the information resources available to immigration and border management decision-makers. These biometrics may include: digital fingerprint scans, facial images, iris images or other biometrics. Biometrics may be collected from travelers entering or exiting the United States, including the collection of biometrics from vehicles upon entry. CBP continues to test and evaluate different technological and operational changes to improve the accuracy and speed of biometric collection.

The federal statutes that mandate DHS to create a biometric entry and exit system include: Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106–215, 114 Stat. 337 (2000); Section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106–396, 114 Stat. 1637, 1641 (2000); Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56, 115 Stat. 272, 353 (2001); Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107–173, 116 Stat. 543, 552, (2002); Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3638, 3817 (2004); Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, 121 Stat. 266 (2007), Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2242, 2493 (2016), Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009–546 (1997), Section 802 of the Trade Facilitation and Trade Enforcement Act of 2015, Public Law 114–125, 130 Stat. 122, 199 (2015), and Sections 214, 215(a), 235(a), 262(a), 263(a) and 264(c) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1184, 1185(a), 1225(a), 1302(a)(1303(a), 1304(c) and 1365b.

New Change

This revision submission will increase the number of respondents whose biometrics are collected in vehicles, and to seek an exemption from PRA citation requirements on biometric/privacy signage. CBP ports of entry and external partners such as airports and seaports post biometric entry-exit privacy signage at those locations where facial comparison technology is in use by or on behalf of CBP. Due to operation costs to main signage to be complaint with PRA requirements, CBP requests that in lieu of placing the OMB number's expiration date on the privacy signage, CBP will link/reference the OMB number, expiration date, and PRA language on CBP's biometric website: *www.cbp.gov/travel/biometrics.* In lieu of displaying the PRA language on the signage, it will be listed on the website along with the current expiration date. This exception reduces the reprint cost to the U.S. government and the external stakeholders and allows the current privacy signage to remain 508 compliant and PBRB approved.

Type of Information Collection: Biometric Data, Fingerprint Modality.
Estimated Number of Respondents: 58,657,882.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 58,657,882.
Estimated Time per Response: .0097 hours.
Estimated Total Annual Burden Hours: 568,981.

Type of Information Collection: Facial/Iris Modality.
Estimated Number of Respondents: 54,542,118.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 54,542,118.
Estimated Time per Response: .0025 hours.
Estimated Total Annual Burden Hours: 136,355.

Type of Information Collection: Facial Scan/Vehicle Modality.
Estimated Number of Respondents: 20,000,000.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 20,000,000.
Estimated Time per Response: 0.
Estimated Total Annual Burden Hours: 0.

Dated: March 20, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–06254 Filed 3–22–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[Docket No. ICEB–2024–0001]

RIN 1653–ZA47

Employment Authorization for Nationals of Burma F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of Current Armed Conflict and the Current Humanitarian Crisis in Burma (Myanmar)

AGENCY: U.S. Immigration and Customs Enforcement; Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Department of Homeland Security is suspending certain

regulatory requirements for F–1 nonimmigrant students from Burma who are experiencing severe economic hardship as a direct result of current armed conflict and the current humanitarian crisis in Burma. The Secretary is providing relief to these students who are in lawful F–1 nonimmigrant status, so the students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 nonimmigrant status.

DATES: This action is effective May 26, 2024, through November 25, 2025.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at *https://www.ice.gov/sevis/.*

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary is exercising authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Burma regardless of country of birth (or individuals having no nationality who last habitually resided in Burma), who are present in the United States in lawful F–1 nonimmigrant student status on the date of publication of this notice, and who are experiencing severe economic hardship as a direct result of current armed conflict and the current humanitarian crisis in Burma. The original notice, which applied to F–1 nonimmigrant students who met certain criteria, including having been lawfully present in the United States in F–1 nonimmigrant status on May 25, 2021, was effective from May 25, 2021, through November 25, 2022. *See* 86 FR 28128 (May 25, 2021). A subsequent notice provided for an extension, effective from November 26, 2022, through May 25, 2024, and expanded the applicability of such suspension to F–1 nonimmigrant students from Burma who were in lawful F–1 nonimmigrant student status on September 27, 2022. *See* 87 FR 58509 (Sept. 27, 2022). Effective with this publication, suspension of the employment limitations is available through November 25, 2025, for those who are in lawful F–1 nonimmigrant status on the date of publication of this notice. DHS will deem an F–1 nonimmigrant student granted employment authorization through this Notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.[1] *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered by this notice?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

(1) Are a citizen of Burma regardless of country of birth (or an individual having no nationality who last habitually resided in Burma);

(2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment for F–1 nonimmigrant students;

(4) Are currently maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of current armed conflict and the current humanitarian crisis in Burma.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

Why is DHS taking this action?

DHS is taking action to provide relief to F–1 nonimmigrant students from Burma experiencing severe economic hardship due to current armed conflict and the current humanitarian crisis in Burma. Based on its review of country conditions in Burma and input received from the U.S. Department of State (DOS), DHS is taking action to allow eligible F–1 nonimmigrant students from Burma to request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

In the last 18 months, what has been described as a civil war[2] has continued throughout Burma. Violent conflict impacted 315 out of 330 of Burma's townships (sub-districts).[3] This has resulted in thousands of civilian deaths, with the military reportedly targeting populations thought to provide support to the resistance. So far, the fighting has displaced over 2.5 million persons, and made life difficult for the more than 300,000 persons who were already internally displaced when the military coup of February 2021 occurred. Recently, as the number of internally displaced persons in Burma surpassed two million, the United Nations Secretary General appealed to all sides to protect non-combatants and open access for humanitarian aid.[4]

Armed Conflict

Since the military coup, an estimated 315 out of Burma's 330 sub-districts or townships have been impacted by violence.[5] Recently, armed opposition groups have grown more unified and have had more success in defeating Burma's military forces. On October 27, 2023, in an operation termed the ''1027 offensive'', which included a coalition of ethnic armed groups, armed

[1] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of November 25, 2025, provided the student satisfies the minimum course load requirements in this notice.

[2] Council on Foreign Relations, Global Conflict Tracker: Civil War in Myanmar, available at *https://www.cfr.org/global-conflict-tracker/conflict/rohingya-crisis-myanmar* (last visited Nov. 30, 2023); *see also,* Yun Sun, The Brookings Institution, The civil war in Myanmar: no end in sight, Feb. 13, 2023, available at *https://www.brookings.edu/articles/the-civil-war-in-myanmar-no-end-in-sight/* (last visited Nov. 30, 2023); International Crisis Group, State-managed elections in Myanmar may lead to further violence, Mar. 28, 2023, available at *https://www.crisisgroup.org/asia/south-east-asia/myanmar/stage-managed-elections-myanmar-may-lead-further-violence* (last visited Nov. 30, 2023).

[3] The Economist, Myanmar's junta suffers startling defeats, Nov. 16, 2023, available at: *https://www.economist.com/asia/2023/11/16/myanmars-junta-suffers-startling-defeats* (last visited Nov. 24, 2023); Shona Loong, International Institute for Strategic Studies, Post-coup Myanmar in six warscapes, June 10, 2022, available at: *https://myanmar.iiss.org/analysis/introduction* (last visited Nov. 24, 2023).

[4] BBC, Myanmar junta's war against rebels displaces millions: UN, Nov. 16, 2023, available at *https://www.bbc.com/news/world-asia-67435786* (last visited Nov. 24, 2023).

[5] The Economist, Myanmar's junta suffers startling defeats, Nov. 16, 2023, available at *https://www.economist.com/asia/2023/11/16/myanmars-junta-suffers-startling-defeats* (last visited Nov. 24, 2023); Shona Loong, International Institute for Strategic Studies, Post-coup Myanmar in six warscapes, June 10, 2022, available at *https://myanmar.iiss.org/analysis/introduction* (last visited Nov. 24, 2023).

opposition forces launched attacks on the military junta and its allies in northern Shan State.[6] This resistance operation, which led to the defeat of Burma's military forces along the Indian and Chinese borders, has also reportedly resulted in an increase in killings of civilians.[7] United Nations (U.N.). agencies have reported that, ''urban areas have increasingly been affected by intense fighting and aerial bombardment.'' [8]

The recent fighting has displaced an additional 600,000 people, bringing the total number of displaced persons to over two and a half million. An estimated 70 civilians (and combatants who are out of action) reportedly have been killed and 90 wounded during the recent uptick in fighting.[9] A June 2023 report, issued by the Peace Research Institute Oslo, stated that, ''at least 6,337 civilians were reported as killed and at least 2,614 as wounded for political reasons in Myanmar in the twenty months between the military coup of February 2021 and September 30, 2022.'' [10] The report emphasized that these numbers only included persons that have been reported as being killed, and also noted that ''politically motivated murders, not collateral killings in connection with armed clashes, constituted the dominant form of violence against civilians in both urban and rural areas in the 20-month period after the coup.''

Human Rights Concerns

DOS, in its 2022 Country Reports on Human Rights Practices, said that ''Reports of killings, disappearances, excessive use of force, disregard for civilian life, gender-based violence, and other abuses committed by regime security forces were common; some groups were accused of similar abuses.'' [11] According to the Assistance Association for Political Prisoners (Association), as of November 27, 2023, 19,721 persons are currently in detention following the February 2021 military coup. Since then, 25,463 people have been arrested in connection with the military coup. The Association also reported that 4,202 people, including pro-democracy activists and civilians, have been killed by the Burma's military or associated forces.[12] As of February 7, 2024, the Association reported that 20,060 individuals are currently in detention.[13]

In the 2023 Trafficking in Persons Report for Burma, DOS indicated that Burma's military frequently forces children to enlist to fight against the armed resistance.[14] In this report, DOS states that, ''The media and other local sources reported cases of the military forcibly recruiting and using adults and children—including via abduction and threats of death.'' [15] This became increasing common as Burma's military has suffered casualties, desertions, and shortages of recruits in recent months.[16]

Humanitarian Concerns

From May 24, 2022 to November 9, 2023, the number of persons in Burma who have been internally displaced since the February 2021 military coup grew from an estimated 694,300, to an estimated 1,710,200, an increase of 146 percent.[17] In the same period, the number of persons displaced from Burma to neighboring countries increased from an estimated 40,200, to an estimated 54,900, an increase of 37 percent.[18] As of November 9, 2023, the states and regions with at least (post-coup) 40,000 displaced persons were Chin, Sagaing, Magwe, Shan (South), Shan (North), Kayah (Karenni), and Kayin (Karen), Bago (East), Mon and Tanintharyi.[19] Five states and regions have over 100,000 (post-coup) displaced persons: Sagaing, Magwe, Kayah (Karenni), Kayin (Karen) and Bago (East).[20] An additional 306,000 people remain displaced from before the military coup, mostly in Chin, Kachin, Rakhine and Shan states.[21]

The U.N. reports, additionally, that ''an estimated 77,000 civilian properties, including houses, religious structures, education, and health facilities, have reportedly been destroyed in areas affected by violence, mostly across the Northwest and the Southeast, although this data is difficult to verify.'' [22] In May 2023, Cyclone Mocha hit Burma, devastating parts of the country, particularly in the Rakhine State.[23]

Economic Concerns

Economic conditions in Burma, which have deteriorated in part due to conflict, have worsened the humanitarian crisis.[24] Burma's economy experienced a sharp contraction in 2021 [25] and, while it is beginning to recover, remains at pre-pandemic levels with conflict-related factors inhibiting

[6] The Economist, Myanmar's junta suffers startling defeats, Nov. 16, 2023, available at *https://www.economist.com/asia/2023/11/16/myanmars-junta-suffers-startling-defeats* (last visited Nov. 24, 2023).

[7] The Irrawaddy, Myanmar Junta Killed at Least 150 Civilians Since Operation 1027 Launch, Nov. 17, 2023, available at *https://www.irrawaddy.com/news/conflicts-in-numbers/myanmar-junta-killed-at-least-150-civilians-since-operation-1027-launch.html* (last visited Nov. 27, 2023).

[8] UN News, Myanmar: Intense fighting spreads to cities, as civilians seek shelter, Nov. 17, 2023, available at *https://news.un.org/en/story/2023/11/1143702* (last visited Nov. 24, 2023).

[9] *Id.*

[10] Peace Research Institute Oslo, Counting Myanmar's Dead: Reported Civilian Casualties since the 2021 Military Coup, Jun. 13, 2023, available at *https://reliefweb.int/report/myanmar/counting-myanmars-dead-reported-civilian-casualties-2021-military-coup* (last visited Nov. 24, 2023).

[11] U.S. Dep't of State, 2022 Country Reports on Human Rights Practices: Burma, Mar. 20, 2023, available at *https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/burma/* (last visited Nov. 24, 2023).

[12] Assistance Association for Political Prisoners (Burma), Daily Briefing in Relation to the Military Coup, Nov. 27, 2023, available at *https://aappb.org/?p=26812* (last visited Feb. 8, 2024).

[13] Assistance Association for Political Prisoners (Burma), Daily Briefing in Relation to the Military Coup, Feb. 7, 2024. Available at *https://aappb.org/?p=27376* (last visited Feb. 9, 2024).

[14] U.S. Dep't of State, 2023 Trafficking in Persons Report: Burma, June 15, 2023, available at *https://www.state.gov/wp-content/uploads/2023/09/Trafficking-in-Persons-Report-2023_Introduction-V3e.pdf* (last visited Jan. 8, 2024).

[15] *Id.*

[16] The Irrawaddy, Myanmar Military Administrators Forced to Recruit for Militias, Oct. 6, 2023, available at *https://www.irrawaddy.com/news/burma/myanmar-junta-administrators-forced-to-recruit-for-militias.html* (last visited Nov. 27, 2023).

[17] U.N. High Commission for Refugees, Myanmar Emergency Overview Map, Nov. 9, 2023, available at *https://www.ecoi.net/en/file/local/2100306/231106+Myanmar+displacement+overview.pdf* (last visited Nov. 24, 2023); *See* also, Myanmar Emergency Overview Map, UNHCR, May 24, 2022, available at *https://www.ecoi.net/en/file/local/2073589/220523+Myanmar+displacement+overview.pdf* (last visited Nov. 28, 2023).

[18] U.N. High Commission for Refugees, Myanmar Emergency Overview Map, Nov. 9, 2023, available at *https://www.ecoi.net/en/file/local/2100306/231106+Myanmar+displacement+overview.pdf* (last visited Nov. 24, 2023); Myanmar Emergency Overview Map, UNHCR, May 24, 2022, available at *https://www.ecoi.net/en/file/local/2073589/220523+Myanmar+displacement+overview.pdf* (last visited Nov. 28, 2023).

[19] U.N. High Commission for Refugees, Myanmar Emergency Overview Map, Nov. 9, 2023, available at *https://www.ecoi.net/en/file/local/2100306/231106+Myanmar+displacement+overview.pdf* (last visited Nov. 24, 2023).

[20] *Id.*

[21] U.N. Office for the Coordination of Humanitarian Affairs, Myanmar Humanitarian Update No. 34, Nov. 10, 2023, available at *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-34-10-november-2023* (last visited Nov. 28, 2023).

[22] *Id.*

[23] BBC, Cyclone Mocha: Deadly storm hits Myanmar and Bangladesh coasts, May 15, 2023, available at *https://www.bbc.com/news/world-asia-65587321* (last visited Nov. 28, 2023).

[24] The Diplomat, The Unfolding Humanitarian Crisis in Myanmar, Sep. 30, 2023, available at *https://thediplomat.com/2023/09/the-unfolding-humanitarian-crisis-in-myanmar/* (last visited Nov. 29, 2023).

[25] Reuters, Myanmar economy to remain 'severely diminished' amid conflict—World Bank, Mar. 30, 2023, available at *https://www.reuters.com/markets/asia/myanmar-economy-remain-severely-diminished-amid-conflict-world-bank-2023-03-31/#:~:text=The%20World%20Bank%20said%20Myanmar's,according%20to%20the%20World%20Bank* (last visited Nov. 29, 2023).

growth.[26] According to the World Bank, ''High prices and shortages resulting from import restrictions make it difficult for many businesses to source essential inputs, while power outages have become prominent. Investment remains weak, with new business registrations at a low level.''[27] With the exception of the agriculture section, profits have declined due to rising costs and limited activity in areas as a result of conflict.[28] Inflation in 2023 has declined slightly to 14.18 percent, but remains high, albeit with projections that it will stabilize in years to come.[29]

As of February 23, 2024, approximately 4,135 F–1 nonimmigrant students from Burma are enrolled at SEVP-certified academic institutions in the United States. Given the extent of current armed conflict and the current humanitarian crisis in Burma, affected students whose primary means of financial support comes from Burma may need to be exempt from the normal student employment requirements to continue their studies in the United States. Current armed conflict and the current humanitarian crisis has made it unfeasible for many students to safely return to Burma for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.

What is the minimum course load requirement to maintain valid F–1 nonimmigrant status under this notice?

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term. Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). A graduate-level F–1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v). Nothing in this notice affects the applicability of other minimum course load requirements set by the academic institution.

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless their course of study is in an English language study program. *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school in kindergarten through grade 12 or public school in grades 9 through 12 must maintain ''class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,'' as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of Federal and State labor laws limiting the employment of minors.

May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?

Yes. An F–1 nonimmigrant student who is a citizen of Burma, regardless of country of birth (or an individual having no nationality who last habitually resided in Burma), who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, the F–1 nonimmigrant student must request that their designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information System (SEVIS) record, which the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, will reflect:

Approved for more than 20 hours per week of [DSO must insert ''on-campus'' or ''off-campus,'' depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever date comes first].[30]

Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her ''full course of study''?

No. DHS will deem an F–1 nonimmigrant student who receives and comports with the employment authorization permitted under this notice to be engaged in a ''full course of study'' [31] for the duration of the student's employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term, and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 nonimmigrant status.

Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible for employment authorization?

No. An F–2 spouse or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 nonimmigrant status, consistent with 8CFR 214.2(f)(15)(i).

Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry into the United States after the effective date of this notice in the Federal Register?

No. The suspension of the applicability of the standard regulatory requirements only applies to certain F–

[26] The World Bank, Myanmar Economic Monitor June 2023: A fragile recovery. Key Findings, June 27, 2023, available at *https://www.worldbank.org/en/country/myanmar/publication/myanmar-economic-monitor-june-2023-a-fragile-recovery-key-findings* (last visited Nov. 29, 2023).

[27] *Id.*

[28] *Id.*

[29] Statista, Myanmar: Inflation rate from 2008 to 2028, Oct. 2023, available at *https://www.statista.com/statistics/525770/inflation-rate-in-myanmar/* (last visited Nov. 29, 2023).

[30] *See* note 1, *supra.*

[31] *See* 8 CFR 214.2(f)(6).

1 nonimmigrant students who meet the following conditions:

(1) Are a citizen of Burma regardless of country of birth (or an individual having no nationality who last habitually resided in Burma);

(2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status, under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is SEVP-certified for enrollment of F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of current armed conflict and the current humanitarian crisis in Burma.

An F–1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of current armed conflict and the current humanitarian crisis in Burma).

Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after the effective date of this notice in the Federal Register and who needs to obtain a new F–1 visa before returning to the United States to continue an educational program?

Yes. This notice applies to such an F–1 nonimmigrant student, but only if the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I–20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F–1 visa to continue an educational program in the United States.

Does this notice apply to elementary school, middle school, and high school students in F–1 status?

Yes. However, this notice does not by itself reduce the required course load for F–1 nonimmigrant students from Burma enrolled in kindergarten through grade 12 at a private school, or grades 9 through 12 at a public high school. Such students must maintain the minimum number of hours of class attendance per week prescribed by the academic institution for normal progress toward graduation, as required under 8CFR214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 nonimmigrant students regardless of educational level. Eligible F–1 nonimmigrant students from Burma enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session.

On-Campus Employment Authorization

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?

Yes. For an F–1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F–1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session if the DSO has entered the following statement in the remarks field of the student's SEVIS record, which will be reflected on the student's Form I–20:

> Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].[32]

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from current armed conflict and the current humanitarian crisis in Burma. An F–1 nonimmigrant student authorized by the DSO to engage in on-campus employment by means of this notice does not need to file any applications with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting full-time on-campus employment when school is not in session or during school vacations apply, as described in 8 CFR 214.2(f)(9)(i).

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain his or her F–1 nonimmigrant student status?

Yes. DHS will deem an F–1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a ''full course of study'' [33] for the purpose of maintaining their F–1 nonimmigrant student status for the duration of the on-campus employment, if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if the reduction would not meet the academic institution's minimum course load requirement for continued enrollment.[34]

Off-Campus Employment Authorization

What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For an F–1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 nonimmigrant student status for one full academic year to be eligible for off-campus employment;

(b) The requirement that an F–1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while the school is in session; and

(d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a

[32] *See* note 1, *supra.*

[33] See 8 CFR 214.2(f)(6).

[34] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

''full course of study'' [35] for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student's employment authorization if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). The authorization for a reduced course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school's minimum course load requirement.[36]

How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from current armed conflict and the current humanitarian crisis in Burma.[37] Filing instructions are located at *https://www.uscis.gov/i-765.*

Fee considerations. Submission of a Form I–765 currently requires payment of a $410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765, Application for Employment Authorization. *See https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver.* The submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). *See* 8 CFR 103.7 (c) (Oct. 1, 2020*).*[38]

Supporting documentation. An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to their DSO:

(1) This employment is necessary to avoid severe economic hardship; and

(2) The hardship is a direct result of current armed conflict and the current humanitarian crisis in Burma.

If the DSO agrees that the F–1 nonimmigrant student is entitled to receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on that student's Form I–20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].[39]

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765 according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the EAD from USCIS.

DSO recommendation. In making a recommendation that an F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

(a) The F–1 nonimmigrant student is in good academic standing and is carrying a ''full course of study'' [40] at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a citizen of Burma, regardless of country of birth (or an individual having no nationality who last habitually resided in Burma), and is experiencing severe economic hardship as a direct result of current armed conflict and the current humanitarian crisis in Burma, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply with the reduced course load requirements of this notice and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level; [41] and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of current armed conflict and the current humanitarian crisis in Burma.

Processing. To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes the following documents:

(1) A completed Form I–765 with all applicable supporting evidence;

(2) The required fee or properly documented fee waiver request as defined in 8 CFR 103.7(c) (Oct. 1, 2020); [42] and

(3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.'' [43] Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, USCIS will send the student a Form I–766 EAD as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

Temporary Protected Status (TPS) Considerations

Can an F–1 nonimmigrant student apply for TPS and for benefits under this notice at the same time?

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or for other relief that reduces the student's course load per term and permits an increased number of work hours per week, such as Special Student Relief,[44] under this notice has two options.

Under the first option, the F–1 nonimmigrant student may apply for TPS according to the instructions in the USCIS notice designating Burma for TPS elsewhere in this issue of the **Federal Register**. All TPS applicants must file a Form I–821, Application for Temporary Protected Status, with the appropriate fee (or request a fee waiver). Although not required to do so, if F–1 nonimmigrant students want to obtain a new TPS-related EAD that is valid through November 25, 2025, and to be eligible for automatic EAD extensions

[35] *See* 8 CFR 214.2(f)(6).

[36] *See* note 34, *supra.*

[37] *See* 8 CFR 274a.12(c)(3)(iii).

[38] On January 31, 2024, DHS published a final rule that adjusts certain fees and moves the description of the fees for the Form I–821 and Form I–765 and the biometric services fee to 8 CFR 106.2 and the fee waiver-related regulations to 8 CFR 106.3. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 89 FR 6194 (Jan. 31, 2024) (effective Apr. 1, 2024). Additional information about the rule is available on the USCIS website. Frequently Asked Questions on the USCIS Fee Rule, USCIS, *https://www.uscis.gov/forms/filing-fees/frequently-asked-questions-on-the-uscis-fee-rule* (last visited Feb. 7, 2024).

[39] *See* note 1, *supra.*

[40] *See* 8 CFR 214.2(f)(6).

[41] 8 CFR 214.2(f)(5)(v).

[42] *See* note 38, *supra.*

[43] Guidance for direct filing addresses can be found here: *https://www.uscis.gov/i-765-addresses.*

[44] *See* DHS Study in the States, Special Student Relief, *https://studyinthestates.dhs.gov/students/special-student-relief* (last visited Oct. 10, 2023).

that may be available to certain EADs with an A–12 or C–19 category code, they must file Form I–765 and pay the Form I–765 fee (or request a fee waiver). After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that their DSO make the required entry in SEVIS and issue an updated Form I–20, which notates that the nonimmigrant student has been authorized to carry a reduced course load, as described in this notice. As long as the F–1 nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate their nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains TPS, then the student maintains F–1 status and TPS concurrently.

Under the second option, the F–1 nonimmigrant student may apply for an EAD under Special Student Relief by filing Form I–765 with the location specified in the filing instructions. At the same time, the F–1 nonimmigrant student may file a separate TPS application but must submit the Form I–821 according to the instructions provided in the **Federal Register** notice designating Burma for TPS. If the F–1 nonimmigrant student has already applied for employment authorization under Special Student Relief, they are not required to submit the Form I–765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS-related EAD in light of certain extensions that may be available to EADs with an A–12 or C–19 category code that are not available to the C–3 category under which Special Student Relief falls. The F–1 nonimmigrant student should check the appropriate box when filling out Form I–821 to indicate whether a TPS-related EAD is being requested. Again, as long as the F–1 nonimmigrant student maintains the minimum course load described in this notice and does not otherwise violate the student's nonimmigrant status, including as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F–1 nonimmigrant student status while having TPS.

When a student applies simultaneously for TPS and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?

The F–1 nonimmigrant student must maintain normal course load requirements for a ''full course of study'' [45] unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (*e.g.,* clock hours for non-traditional academic programs). Once approved for a TPS-related EAD and Special Student Relief employment authorization, as indicated by the DSO's required entry in SEVIS and issuance of an updated Form I–20, the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if at the graduate level). *See* 8 CFR 214.2(f)(5)(v), (f)(6), and (f)(9)(i) and (ii).

How does a student who has received a TPS-related EAD then apply for authorization to take a reduced course load under this notice?

There is no further application process with USCIS if a student has been approved for a TPS-related EAD. The F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from current armed conflict and the current humanitarian crisis in Burma. The DSO will then verify and update the student's record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

Can a noncitizen who has been granted TPS apply for reinstatement of F–1 nonimmigrant student status after the noncitizen's F–1 nonimmigrant student status has lapsed?

Yes. Regulations permit certain students who fall out of F–1 nonimmigrant student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). This provision may apply to students who worked on a TPS-related EAD or dropped their course load before publication of this notice, and therefore fell out of student status. These students must satisfy the criteria set forth in the F–1 nonimmigrant student status reinstatement regulations.

How long will this notice remain in effect?

This notice grants temporary relief until November 25, 2025,[46] to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Burma. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

Paperwork Reduction Act (PRA)

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from current armed conflict and the current humanitarian crisis in Burma must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765, consistent with the PRA (OMB Control Number 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

Alejandro Mayorkas,

Secretary, U.S. Department of Homeland Security.

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[45] *See* 8 CFR 214.2(f)(6).

[46] *See* note 1, *supra.*

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2765–24; DHS Docket No. USCIS–2021–0005]

RIN 1615–ZB88

Extension and Redesignation of Burma (Myanmar) for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of Temporary Protected Status (TPS) extension and redesignation.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Burma for Temporary Protected Status (TPS) for 18 months, beginning on May 26, 2024, and ending on November 25, 2025. This extension allows existing TPS beneficiaries to retain TPS through November 25, 2025, if they otherwise continue to meet the eligibility requirements for TPS. Existing TPS beneficiaries who wish to extend their status through November 25, 2025, must re-register during the 60-day re-registration period described in this notice. The Secretary is also redesignating Burma for TPS. The redesignation of Burma allows additional nationals of Burma (and individuals having no nationality who last habitually resided in Burma) who have been continuously residing in the United States since March 21, 2024, to apply for TPS for the first time during the initial registration period described under the redesignation information in this notice. In addition to demonstrating continuous residence in the United States since March 21, 2024, and meeting other eligibility criteria, initial applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since May 26, 2024, the effective date of this redesignation of Burma for TPS.

DATES: Extension and Redesignation of the Designation of Burma for TPS begins on May 26, 2024, and will remain in effect for 18 months. For registration instructions, see the Registration Information section below.

FOR FURTHER INFORMATION CONTACT:

• You may contact Renáa Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 240–721–3000.

• For more information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at *https://www.uscis.gov/tps*. You can find specific information about Burma's TPS designation by selecting ''Burma'' from the menu on the left side of the TPS web page.

• If you have additional questions about TPS, please visit *https://uscis.gov/tools*. Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you cannot find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

• Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *uscis.gov,* or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter*.

• You can also find more information at local USCIS offices after this notice is published.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DoS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–131—Application for Travel Document
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Registration Information

Extension of Designation of Burma for TPS: The 18-month designation of Burma for TPS begins on May 26, 2024, and will remain in effect for 18 months, ending on November 25, 2025. The extension affects existing beneficiaries of TPS.

Re-registration: The 60-day re-registration period for existing beneficiaries runs from March 25, 2024, through May 24, 2024. (Note: It is important for re-registrants to timely re-register during the re-registration period and not to wait until their Employment Authorization Document (EAD) expires, as delaying re-registration could result in gaps in their employment authorization documentation.)

Redesignation of Burma for TPS: The 18-month redesignation of Burma for TPS begins on May 26, 2024, and will remain in effect for 18 months, ending on November 25, 2025. The redesignation affects potential first-time applicants and others who do not currently have TPS.

First-time Registration: The initial registration period for new applicants to apply under the Burma TPS redesignation begins on March 25, 2024, and will remain in effect through November 25, 2025.

Purpose of This Action (TPS)

Through this notice, DHS sets forth procedures necessary for nationals of Burma (or individuals having no nationality who last habitually resided in Burma) to (1) re-register for TPS and apply to renew their EAD with USCIS or (2) submit an initial registration application under the redesignation and apply for an EAD.

Re-registration is limited to individuals who have previously registered for TPS under the prior designation of Burma and whose applications have been granted. If you do not re-register properly within the 60-day re-registration period, USCIS may withdraw your TPS following appropriate procedures. *See* 8 CFR 244.14.

For individuals who have already been granted TPS under Burma's designation, the 60-day re-registration period runs from March 25, 2024, through May 24, 2024. USCIS will issue new EADs with a November 25, 2025, expiration date to eligible TPS beneficiaries from Burma who timely re-register and apply for EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive a new EAD before their current EAD expires. Accordingly, through this

Federal Register notice, DHS automatically extends through May 25, 2025, the validity of certain EADs previously issued under the TPS designation of Burma. As proof of continued employment authorization through May 25, 2025, TPS beneficiaries can show their EAD with the notation A–12 or C–19 under Category and a ''Card Expires'' date of May 25, 2024, or November 25, 2022. This notice explains how TPS beneficiaries and their employers may determine if an EAD is automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have a Burma TPS application (Form I–821) or Application for Employment Authorization (Form I–765) that was still pending as of March 25, 2024, do not need to file either application again. If USCIS approves an individual's pending Form I–821, USCIS will grant the individual TPS through November 25, 2025. Similarly, if USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through the same date.

Under the redesignation, individuals who currently do not have TPS may submit an initial application during the initial registration period that runs from March 25, 2024, through the full length of the redesignation period ending November 25, 2025. In addition to demonstrating continuous residence in the United States since March 21, 2024, and meeting other eligibility criteria, initial applicants for TPS under this redesignation must demonstrate that they have been continuously physically present in the United States since May 26, 2024,[1] the effective date of this redesignation of Burma, before USCIS may grant them TPS. DHS estimates that approximately 7,300 individuals may become newly eligible for TPS under the redesignation of Burma.

What Is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs if they continue to meet the requirements of TPS.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of DHS discretion.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:
  - The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or
  - Any other lawfully obtained immigration status or category they received while registered for TPS, if it is still valid beyond the date their TPS terminates.

When was Burma designated for TPS?

Burma was originally designated for TPS on May 25, 2021, on the basis of extraordinary and temporary conditions that prevented nationals of Burma from returning in safety.[2] On September 27, 2022, DHS extended and redesignated Burma for TPS for 18 months based on extraordinary and temporary conditions, from November 26, 2022, to May 25, 2024.[3]

What authority does the Secretary have to extend the designation of Burma for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[4] The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, termination, or extension of a designation. *See* INA sec. 244(b)(5)(A), 8 U.S.C. 1254a(b)(5)(A). The Secretary, in their discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA sec. 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state continues to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA sec. 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

What is the Secretary's authority to redesignate Burma for TPS?

In addition to extending an existing TPS designation, the Secretary, after consultation with appropriate Government agencies, may redesignate a country (or part thereof) for TPS. *See* INA sec. 244(b)(1), 8 U.S.C. 1254a(b)(1); *see also* INA sec. 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that ''the alien has been continuously physically present since the effective date of *the most recent designation of the state*'') (emphasis added).[5]

[1] The ''continuous physical presence'' date is the effective date of the most recent TPS designation of the country, which is either the publication date of the designation announcement in the **Federal Register** or a later date established by the Secretary. The ''continuous residence'' date is any date established by the Secretary when a country is designated (or sometimes redesignated) for TPS. *See* INA sec. 244(b)(2)(A) (effective date of designation); 244(c)(1)(A)(i–ii) (continuous residence and continuous physical presence date requirements); 8 U.S.C. 1254a(b)(2)(A); 1254a(c)(1)(A)(i–ii).

[2] *See Designation of Burma (Myanmar) for Temporary Protected Status,* 86 FR 28132 (May 25, 2021).

[3] *See Extension and Redesignation of Burma (Myanmar) for Temporary Protected Status,* 87 FR 58515 (Sept. 27, 2022).

[4] INA section 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (2002). The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. INA sec. 244(b)(1); 8 U.S.C. 1254a(b)(1).

[5] The extension and redesignation of TPS for Burma is one of several instances in which the Secretary and, before the establishment of DHS, the Attorney General, have simultaneously extended a country's TPS designation and redesignated the country for TPS. *See, e.g., Extension and Redesignation of Haiti for Temporary Protected Status,* 76 FR 29000 (May 19, 2011); *Extension and*

Continued

When the Secretary designates or redesignates a country for TPS, the Secretary also has the discretion to establish the date from which TPS applicants must demonstrate that they have been ''continuously resid[ing]'' in the United States. *See* INA sec. 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii). The Secretary has determined that the ''continuous residence'' date for applicants for TPS under the redesignation of Burma will be March 21, 2024. Initial applicants for TPS under this redesignation must also show they have been ''continuously physically present'' in the United States since May 26, 2024, which is the effective date of the Secretary's redesignation of Burma. *See* INA sec. 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i). For each initial TPS application filed under the redesignation, USCIS cannot make the final determination of whether the applicant has met the ''continuous physical presence'' requirement until May 26, 2024, the effective date of this redesignation for Burma.

USCIS, however, will issue employment authorization documentation, as appropriate, during the registration period in accordance with 8 CFR 244.5(b).

Why is the Secretary extending the TPS designation for Burma and simultaneously redesignating Burma for TPS through November 25, 2025?

DHS has reviewed country conditions in Burma. Based on the review, including input received from Department of State (DoS) and other U.S. Government agencies, the Secretary has determined that an 18-month TPS extension is warranted because extraordinary and temporary conditions supporting Burma's TPS designation remain. The Secretary has further determined that redesignating Burma for TPS under INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C) is warranted and is changing the continuous residence and continuous physical presence dates that applicants must meet to be eligible for TPS.

Overview

The February 1, 2021, military coup that overthrew Burma's democratically elected civilian government gave rise to further widespread violence that continues to put persons in Burma at significant risk. Attacks killing civilians are frequent, and particularly affect members of certain ethnic groups. Human trafficking perpetrated by both the military regime and criminal actors is prevalent. Burma also faces challenges in the provision of food, access to health care, and economic stability.

Ongoing Violence

Violence stemming from the coup has affected an estimated 315 of Burma's 330 townships.[6] Those harmed include supporters of the opposition National Unity Government (NUG), pro-democracy People's Defense Forces (PDFs), Ethnic Resistance Organizations (EROs), and civilians perceived to oppose the military regime. Since the coup began, the regime has reportedly killed more than 4,000 people.[7]

The military-appointed State Administration Council reportedly has adopted the ''four cuts'' strategy—which relies on airstrikes and shelling, razing of entire villages, and denial of humanitarian access—to sever resistance groups from food, finances, intelligence, recruits, and popular support.[8] Observers attest that due to ''continued armed and unarmed resistance to the coup it set in motion two years ago, [Burma's military] has increasingly resorted to targeting civilians as it fails to consolidate control over the country.'' [9] A monitoring mechanism established to collect evidence of serious violations of international law has tracked a ''marked increase'' in the use of bombs against civilians.[10] Further, the regime's security forces are commonly reported to have committed disappearances, excessive use of force, gender-based violence, and other abuses, with some PDF and ERO groups accused of similar abuses.[11]

The regime has unleashed brutal violence against PDFs, including the use of beheadings and bodily mutilation to terrorize the opposition.[12] It reportedly has also used ultranationalist, pro-military armed groups to collect information on opponents, spread propaganda, destroy property, and engage in violent tactics as a means of ''psychological warfare'' against people in Burma, with the goal of ''terrorizing civilians into submission.'' [13]

This violence has disproportionately affected certain ethnic groups. Members of Karen and Karenni ethnic groups in eastern Burma reportedly are particularly targeted with violence due to their longstanding history of political awareness and resistance.[14] Residents of Chin State, home to the ethnic Chin minority, have been displaced in large numbers since the coup, with approximately 50,000 residents having crossed into India and more than 48,000 internally displaced.[15] Rohingya continue to suffer mistreatment; even before the coup, the military promoted discriminatory policies and rhetoric toward Rohingya and excluded them from citizenship, political life, and vital services,[16] with the United States assessing that members of Burma's military have committed genocide and crimes against humanity against them.[17]

Re-designation of Temporary Protected Status for Sudan, 69 FR 60168 (Oct. 7, 2004); *Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program,* 62 FR 16608 (Apr. 7, 1997).

[6] Myanmar's junta suffers startling defeats, The Economist, Nov. 16, 2023, available at *https://www.economist.com/asia/2023/11/16/myanmars-junta-suffers-startling-defeats* (last visited Nov. 24, 2023).

[7] Daily Briefing in Relation to the Military Coup, Assistance Association for Political Prisoners, Dec. 4, 2023, available at *https://aappb.org/?lang=en* (last visited Dec. 4, 2023).

[8] The Unfolding Humanitarian Crisis in Myanmar, The Diplomat, Sep. 30, 2023, available at *https://thediplomat.com/2023/09/the-unfolding-humanitarian-crisis-in-myanmar/* (last visited Dec. 5, 2023); Military's 'four cuts' doctrine drives perpetual human rights crisis in Myanmar, says UN report, Office of the High Commissioner for Human Rights, Mar. 3, 2023, available at *https://www.ohchr.org/en/press-releases/2023/03/militarys-four-cuts-doctrine-drives-perpetual-human-rights-crisis-myanmar* (last visited Dec. 5, 2023).

[9] Armed Conflict Location and Event Database, Myanmar: Continued Opposition to the Junta Amid Increasing Civilian Targeting by the Military, Feb. 8, 2023, available at: *https://acleddata.com/conflict-watchlist-2023/myanmar/* (last visited Feb. 6, 2024).

[10] Rebecca Tan and Cape Diamond, Myanmar's military said it bombed ''terrorists.'' It killed children., The Washington Post, Aug. 4, 2023, available at *https://www.washingtonpost.com/world/2023/08/04/myanmar-military-attack-civilians-children/* (last visited Feb. 6, 2024).

[11] U.S. Dep't of State, 2022 Country Reports on Human Rights Practices: Burma, Mar. 20, 2023, available at *https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/burma/* (last visited Feb. 6, 2024).

[12] ''Ogre'' battalion uses brutality to install terror in Myanmar, Radio Free Asia, Apr. 22, 2023, available at *https://www.rfa.org/english/news/myanmar/ogre-04192023150057.html* (last visited Feb. 6, 2024).

[13] The Rise of Pyy Saw Htee, Mar. 12, 2022, available at *https://progressivevoicemyanmar.org/2022/03/12/the-rising-of-pyu-saw-htee/* (last visited Feb. 7, 2024).

[14] Myanmar's 'forgotten people' bear the brunt of war, Nikkei Asia, Mar. 31, 2023, available at *https://asia.nikkei.com/Life-Arts/Life/Myanmar-s-forgotten-people-bear-brunt-of-war* (last visited Nov. 27, 2023).

[15] Myanmar Emergency Overview Map, U.N. High Commission for Refugees (UNHCR), Nov. 7, 2023, available at *https://www.ecoi.net/en/file/local/2100306/231106+Myanmar+displacement+overview.pdf.*

[16] Myanmar Authorities Must Ensure Full Legal Recognition of the Right to Citizenship of All Rohingya People, Deputy High Commissioner tells Human Rights Council—Council Concludes Interactive Dialogue with the High Commissioner on his Annual Report, June 21, 2023, available at *https://www.ohchr.org/en/news/2023/06/myanmar-authorities-must-ensure-full-legal-recognition-right-citizenship-all-rohingya* (last visited Nov. 27, 2023).

[17] U.S. Dep't of State, Genocide, Crimes Against Humanity and Ethnic Cleansing of Rohingya in Burma, available at *https://www.state.gov/burma-genocide/* (last visited Dec. 4, 2023).

From May 24, 2022, to November 7, 2023, the number of persons in Burma displaced internally due to the effects of the coup grew from an estimated 694,300 people to an estimated 1,710,200, an increase of 146%.[18] In the same period, the number of persons displaced from Burma to neighboring countries increased from an estimated 40,200 people to an estimated 54,900, a rise of 37%.[19] In light of recent fighting that has caused further displacement, the total number of displaced persons is now thought to have reached 2.6 million.[20]

Human Trafficking

The military reportedly has forcibly used and recruited adults and children—including through abduction and threats of death—in various military support roles and as human shields, and also uses children in combat roles.[21] Armed groups fighting against the military of Burma have been accused of forced recruitment or use as well.[22]

The regime relies on human trafficking to profit from international scams, with reports of ''one particularly sinister enclave'' in which ''as many as 10,000 people are enslaved[,] . . . tortured or, according to some accounts, threatened with having their organs harvested if they fail to generate adequate revenue from operating scams.'' [23] Sources estimate that at least 120,000 people across the country may be held in situations where traffickers exploit them in forced criminality to carry out online scams.[24] Further, criminal industries relying on human trafficking have moved to Burma from elsewhere in southeast Asia, with Burma having ''emerged as the preferred location for criminal groups to base their trafficking and scam operations,'' as ''revenue from organized crime via corrupt border guard forces has become a key pillar of [Burma's army's] survival strategy.'' [25] Some EROs are also allegedly complicit in large-scale forced labor in forced criminality of migrant workers in scam centers, and are alleged to use physical and sexual violence to compel the migrants.[26]

Humanitarian Needs

Around 12.9 million people in Burma are considered to be either moderately or severely food insecure.[27] Rising food prices and reduced incomes have worsened food security and nutrition.[28] At mid-year, the United Nations assessed that its nutrition aid had reached only 17% of the children targeted for assistance related to severe acute malnutrition in 2023.[29] Administrative and physical restrictions have delayed or forced the cancellation of humanitarian aid deliveries more broadly.[30]

Reports indicate that ''health care infrastructures have all but collapsed,'' partly due to many health care providers participating in civil disobedience movements among public sector workers aimed at undermining the military's control.[31] Additionally, health care providers have been arrested on suspicion of supporting resistance forces and hospitals have been damaged by military attacks.[32]

Economic conditions in Burma, which have deteriorated in part due to conflict, have worsened the humanitarian crisis.[33] Burma's economy experienced a sharp contraction in 2021 and, while it is beginning to recover, remains at pre-pandemic levels, with conflict-related factors continuing to inhibit growth.[34] Inflation in 2023 declined slightly but remained high, above 14%.[35]

Based on this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting Burma's designation for TPS continue to be met. *See* INA sec. 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continue to be extraordinary and temporary conditions in Burma that prevent nationals of Burma (or individuals having no nationality who last habitually resided in Burma) from returning to Burma in safety, and it is not contrary to the national interest of

[18] Myanmar Emergency Overview Map, UNHCR, Nov. 7, 2023, available at *https://www.ecoi.net/en/file/local/2100306/231106+Myanmar+displacement+overview.pdf;* Myanmar Emergency Overview Map, UNHCR, May 24, 2022, available at *https://www.ecoi.net/en/file/local/2073589/220523+Myanmar+displacement+overview.pdf.*

[19] Myanmar Emergency Overview Map, UNHCR, Nov. 7, 2023, available at *https://www.ecoi.net/en/file/local/2100306/231106+Myanmar+displacement+overview.pdf;* Myanmar Emergency Overview Map, UNHCR, May 24, 2022, available at *https://www.ecoi.net/en/file/local/2073589/220523+Myanmar+displacement+overview.pdf.*

[20] Myanmar: Intensification of Clashes Flash Update #10, U.N. Office for the Coordination of Humanitarian Affairs (UNOCHA), Dec. 15, 2023, available at *https://reliefweb.int/report/myanmar/myanmar-intensification-clashes-flash-update-10-15-december-2023-enmy* (last visited Jan. 11, 2024).

[21] U.S. Dep't of State, 2023 Trafficking in Persons Report: Burma, June 15, 2023, available at *https://www.state.gov/reports/2023-trafficking-in-persons-report/burma/#:~:text=Burma%20does%20not%20fully%20meet,Burma%20remained%20on%20Tier%203* (last visited Nov. 28, 2023).

[22] Pay, Flee or Pay to Avoid Forced Military Conscription, Karen News, Dec. 10, 2022, available at *https://karennews.org/2022/12/pay-flee-or-pay-to-avoid-forced-military-conscription/* (last visited Nov. 27, 2023).

[23] Myanmar's Criminal Zones: A Growing Threat to Global Security, U.S. Institute of Peace, Nov. 9, 2022, available at *https://www.usip.org/publications/2022/11/myanmars-criminal-zones-growing-threat-global-security* (last visited Nov. 28, 2022).

[24] Online Scam Operations and Trafficking into Forced Criminality in Southeast Asia: Recommendations for a Human Rights Response, U.N. Office of the High Commissioner for Human Rights, Aug. 25, 2023, available at *https://bangkok.ohchr.org/wp-content/uploads/2023/08/ONLINE-SCAM-OPERATIONS-2582023.pdf* (last visited Nov. 28, 2023).

[25] Myanmar's Criminal Zones: A Growing Threat to Global Security, U.S. Institute of Peace, Nov. 9, 2022, available at *https://www.usip.org/publications/2022/11/myanmars-criminal-zones-growing-threat-global-security* (last visited Nov. 28, 2022).

[26] U.S. Dep't of State, 2023 Trafficking in Persons Report: Burma, June 15, 2023, available at *https://www.state.gov/reports/2023-trafficking-in-persons-report/burma/#:~:text=Burma%20does%20not%20fully%20meet,Burma%20remained%20on%20Tier%203* (last visited Nov. 28, 2023).

[27] Myanmar Humanitarian Update No. 34, UNOCHA, Nov. 10, 2023, available at *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-34-10-november-2023* (last visited Nov. 28, 2023).

[28] The World Bank, Myanmar Economic Monitor June 2023: A fragile recovery. Key Findings, June 27, 2023, available at *https://www.worldbank.org/en/country/myanmar/publication/myanmar-economic-monitor-june-2023-a-fragile-recovery-key-findings* (last visited Nov. 29, 2023).

[29] Humanitarian Response Plan: Myanmar-Mid-year Report 2023, UNOCHA, Oct. 2023, available at *https://myanmar.un.org/sites/default/files/2023-10/MMR%20HRP%20MID-YEAR%20REPORT%20''2023_0.pdf* (last visited Nov. 28, 2023).

[30] Myanmar Humanitarian Update No. 34, UNOCHA, Nov. 10, 2023, available at *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-34-10-november-2023* (last visited Nov. 28, 2023).

[31] Wei-Ti Chen *et al,* Infrastructure collapsed, health care access disrupted, Myanmar people with chronic diseases are in danger, Journal of Global Health, Jan. 2023, available at *https://jogh.org/wp-content/uploads/2023/01/jogh-13-03002.pdf;* Progressive Voice, Civil Disobedience Movement: A Foundation of Myanmar's Spring Revolution and Force Behind Military's Failed Coup, May 25, 2023, available at *https://progressivevoicemyanmar.org/2023/05/25/civil-disobedience-movement-a-foundation-of-myanmars-spring-revolution-and-force-behind-militarys-failed-coup/*(last visited Nov. 22, 2023).

[32] Attacks on Health Care in Myanmar, Insecurity Insight, Mar. 14, 2023, available at *https://reliefweb.int/report/myanmar/attacks-health-care-myanmar-22-february-07-march-2023* (last visited Nov. 28, 2023).

[33] The Unfolding Humanitarian Crisis in Myanmar, The Diplomat, Sep. 30, 2023, available at *https://thediplomat.com/2023/09/the-unfolding-humanitarian-crisis-in-myanmar/* (last visited Nov. 29, 2023).

[34] Myanmar economy to remain 'severely diminished' amid conflict—World Bank, Reuters, Mar. 30, 20203, available at *https://www.reuters.com/markets/asia/myanmar-economy-remain-severely-diminished-amid-conflict-world-bank-2023-03-31/#:~:text=The%20World%20Bank%20said%20Myanmar's,according%20to%20the%20World%20Bank* (last visited Nov. 29, 2023).

[35] Myanmar: Inflation rate from 2008 to 2023, Statista, Oct. 2023, available at *https://www.statista.com/statistics/525770/inflation-rate-in-myanmar/* (last visited Nov. 29, 2023).

the United States to permit TPS beneficiaries from Burma to remain in the United States temporarily. *See* INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).

- The designation of Burma for TPS should be extended for an 18-month period, beginning on May 26, 2024, and ending on November 25, 2025. *See* INA sec. 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- Due to the conditions described above, Burma should be simultaneously extended and redesignated for TPS beginning on May 26, 2024, and ending on November 25, 2025. *See* INA sec. 244(b)(1)(C) and (b)(2), 8 U.S.C. 1254a(b)(1)(C) and (b)(2).
- For the redesignation, the Secretary has determined that TPS applicants must demonstrate that they have continuously resided in the United States since March 21, 2024.
- Initial TPS applicants under the redesignation must demonstrate that they have been continuously physically present in the United States since May 26, 2024, the effective date of the redesignation of Burma for TPS.
- There are approximately 2,300 current Burma TPS beneficiaries who are eligible to re-register for TPS under the extension.
- It is estimated that approximately 7,300 additional individuals may be eligible for TPS under the redesignation of Burma. This population includes nationals of Burma in the United States in nonimmigrant status or without immigration status.

Notice of the Designation of Burma for TPS

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Burma's designation for TPS on the basis of extraordinary and temporary conditions are met and it is not contrary to the national interest of the United States to allow TPS beneficiaries from Burma to remain in the United States temporarily. *See* INA sec. 244(b)(1)(C), U.S.C. 1254a(b)(1)(C). On the basis of this determination, I am simultaneously extending the existing designation of Burma for TPS for 18 months, beginning on May 26, 2024, and ending on November 25, 2025, and redesignating Burma for TPS for the same 18-month period. *See* INA sec. 244(b)(1)(C) and (b)(2); 8 U.S.C. 1254a(b)(1)(C) and (b)(2).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Eligibility and Employment Authorization for TPS

Required Application Forms and Application Fees To Register or Re-Register for TPS

To register or re-register for TPS based on the designation of Burma, you must submit a Form I–821. If you are submitting an initial TPS application, you must pay the application fee for Form I–821 (or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver). If you are filing an application to re-register for TPS, you do not need to pay the application fee. Whether you are registering as an initial applicant or re-registering, you may be required to pay the biometric services fee. If you can demonstrate an inability to pay the biometric services fee, you may request to have the fee waived. Please see additional information under the ''Biometric Services Fee'' section of this notice.

TPS beneficiaries are eligible for an Employment Authorization Document (EAD), which proves their authorization to work in the United States. You are not required to submit Form I–765 or have an EAD to be granted TPS, but see below for more information if you want an EAD to use as proof that you can work in the United States.

Individuals who have a Burma TPS application (Form I–821) that was still pending as of March 25, 2024, do not need to file the application again. If USCIS approves an individual's Form I–821, USCIS will grant the individual TPS through November 25, 2025.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1) (Oct. 1, 2020).[36] In addition, USCIS Form G–1055, Fee Schedule, provides the current fees required for the Form I–821 and Form I–765 for both initial TPS applicants and existing TPS beneficiaries who are re-registering.

How can TPS beneficiaries obtain an Employment Authorization Document (EAD)?

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. TPS beneficiaries are eligible to obtain an EAD, which proves their legal right to work. If you want to obtain an EAD, you must file Form I–765 and pay the Form I–765 fee (or request a fee waiver, which you may submit on Form I–912). TPS applicants may file this form with their TPS application, or separately later, if their TPS application is still pending or has been approved. Beneficiaries with a Burma TPS-related Form I–765 that was still pending as of March 25, 2024, do not need to file the application again. If USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through November 25, 2025.

Refiling an Initial TPS Registration Application After Receiving a Denial of a Fee Waiver Request

If USCIS denies your fee waiver request, you can resubmit your TPS application. The fee waiver denial notice will contain specific instructions about resubmitting your application.

Filing Information

You may file Form I–821 and related requests for EADs online or by mail. However, if you request a fee waiver, you must submit your application by mail. When filing a TPS application, you may request an EAD by submitting a completed Form I–765 with your Form I–821.

Online filing: Form I–821 and Form I–765 are available for concurrent filing online.[37] To file these forms online, you must first create a USCIS online account.[38]

Mail filing: Mail your completed Form I–821; Form I–765, if applicable; Form I–912, if applicable; and supporting documentation to the proper address in Table 1—Mailing Addresses.

[36] On January 31, 2024, DHS published a final rule that adjusts certain fees and moves the description of the fees for the Form I–821 and Form I–765 and the biometric services fee to 8 CFR 106.2 and the fee waiver-related regulations to 8 CFR 106.3. *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,* 89 FR 6194 (Jan. 31, 2024) (effective Apr. 1, 2024). Additional information about the rule is available on the USCIS website. *Frequently Asked Questions on the USCIS Fee Rule,* USCIS, *https://www.uscis.gov/forms/filing-fees/frequently-asked-questions-on-the-uscis-fee-rule* (last visited Feb. 7, 2024).

[37] Find information about online filing at ''Forms Available to File Online,'' *https://www.uscis.gov/file-online/forms-available-to-file-online.*

[38] *https://myaccount.uscis.gov/users/sign_up.*

TABLE 1—MAILING ADDRESSES

If you are . . .	Mail to . . .
Using the U.S. Postal Service (USPS)	USCIS, Attn: TPS Burma, P.O. Box 6943, Chicago, IL 60680–6943.
Using FedEx, UPS, or DHL	USCIS, Attn: TPS Burma (Box 6943), 131 South Dearborn Street, 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD, please file online or mail your Form I–765 to the appropriate address in table 1. If you file online, please include the fee. If you file by mail, please include the fee or fee waiver request. When you request an EAD based on an IJ or BIA grant of TPS, please include with your application a copy of the order from the IJ or BIA granting you TPS. This will help us verify your grant of TPS and process your application.

Supporting Documents

The filing instructions for Form I–821 list all the documents you need to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying (also called registering) for TPS on the USCIS website at *https://www.uscis.gov/tps* under ''Burma.''

Travel

TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United States. If USCIS grants travel authorization, it gives you permission to leave the United States and return during a specific period. To request travel authorization, you must file Form I–131, Application for Travel Document, available at *https://www.uscis.gov/i-131.* You may file Form I–131 together with your Form I–821 or separately. When you file Form I–131, you must:

- Select Item Number 1.d. in Part 2 on the Form I–131; and
- Submit the fee for Form I–131, or request a fee waiver, which you may submit on Form I–912.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in table 2 and include a copy of Form I–797 for your approved or pending Form I–821.

TABLE 2—MAILING ADDRESSES

If you are . . .	Mail to . . .
Filing Form I–131 together with a Form I–821	The address provided in Table 1.
Filing Form I–131 based on a pending or approved Form I–821, and you are using the U.S. Postal Service (USPS): You must include a copy of the Notice of Action (Form I–797C or I–797) showing USCIS accepted or approved your Form I–821.	USCIS, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867.
Filing Form I–131 based on a pending or approved Form I–821, and you are using FedEx, UPS, or DHL: You must include a copy of the Notice of Action (Form I–797C or I–797) showing USCIS accepted or approved your Form I–821.	USCIS, Attn: I–131 TPS, 2501 S State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067.

Biometric Services Fee for TPS

Biometrics (such as fingerprints) are required for all applicants age 14 years or older. Those applicants must submit a biometric services fee. As previously stated, if you cannot pay the biometric services fee, you may request a fee waiver, which you may submit on Form I–912. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* USCIS may require you to visit an Application Support Center to have your biometrics collected. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *https://www.dhs.gov/publication/dhsuscispia-060-customer-profile-management-service-cpms.*

General Employment-Related Information for TPS Applicants and Their Employers

How can I obtain information on the status of my TPS application and EAD request?

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at *https://uscis.gov* or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.* If your Form I–765 has been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at *https://egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Am I eligible to receive an automatic extension of my current EAD through May 25, 2025, through this Federal Register notice?

Yes. Regardless of your country of birth, if you currently have a Burma TPS-based EAD with the notation A–12 or C–19 under Category and a ''Card Expires'' date of May 25, 2024, or November 25, 2022, this **Federal Register** notice automatically extends your EAD through May 25, 2025. Although this **Federal Register** notice automatically extends your EAD through May 25, 2025, you must timely re-register for TPS in accordance with the procedures described in this **Federal Register** notice to maintain your TPS and employment authorization.

When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?

You can find the Lists of Acceptable Documents on Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *https://www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *https://www.uscis.gov/I-9Central.* An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?'' of this **Federal Register** notice for more information. If your EAD states A–12 or C–19 under Category and has a Card Expires date of May 25, 2024, or November 25, 2022, this **Federal Register** notice extends it automatically, and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through May 25, 2025, unless your TPS has been withdrawn or your request for TPS has been denied. Your country of birth noted on the EAD does not have to reflect the TPS-designated country of Burma for you to be eligible for this extension.

What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?

Even though we have automatically extended your EAD, your employer is required by law to ask you about your continued employment authorization. Your employer may need to re-examine your automatically extended EAD to check the ''Card Expires'' date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the ''Card Expires'' date and Category code, they should update the EAD expiration date in Section 2 of Form I–9. See the section ''What updates should my current employer make to Form I–9 if my EAD has been automatically extended?'' of this **Federal Register** notice for more information. You may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through May 25, 2025, but you are not required to do so. The last day of the automatic EAD extension is May 25, 2025. Before you start work on May 26, 2025, your employer is required by law to reverify your employment authorization on Form I–9. By that time, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 instructions to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, even if you already have an EAD or work authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through November 25, 2025, you must file Form I–765 and pay the associated fee (unless USCIS grants your fee waiver request).

Can my employer require that I provide any other documentation to complete Form I–9, such as evidence of my status, proof of my Burma citizenship, or a Form I–797C showing that I registered for TPS?

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request other documentation, such as proof of Burma citizenship or proof of registration for TPS, when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document if the EAD reasonably appears to be genuine and to relate to you. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status or your national origin.

How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?

When using an automatically extended EAD to complete Form I–9 for a new job before May 26, 2025:

1. For Section 1, you should:

a. Check ''A noncitizen authorized to work until'' and enter May 25, 2025, as the ''expiration date''; and

b. Enter your USCIS number or A–Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A–Number printed on it; the USCIS number is the same as your A–Number without the A prefix.)

2. For Section 2, employers should:

a. Determine whether the EAD is auto-extended by ensuring it is in category A–12 or C–19 and has a ''Card Expires'' date of May 25, 2024, or November 25, 2022;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write May 25, 2025, as the expiration date.

Before the start of work on May 26, 2025, employers must reverify the employee's employment authorization on Form I–9.

What updates should my current employer make to Form I–9 if my EAD has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-examine your current EAD if they do not have a copy of the EAD on file. Your employer should determine whether your EAD is automatically extended by ensuring that it contains Category A–12 or C–19 and has a ''Card Expires'' date of May 25, 2024, or November 25, 2022. Your employer may not rely on the country of birth listed on the card to determine whether you are eligible for this extension.

If your employer determines that USCIS has automatically extended your EAD, they should update Section 2 of your previously completed Form I–9 as follows:

1. Write EAD EXT and May 25, 2025, as the last day of the automatic extension in the Additional Information field; and

2. Initial and date the correction.

Note: This is not considered a reverification. Employers do not reverify the employee until either the automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By May 26, 2025, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization on Form I–9.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by entering the number from the Document Number field on Form I–9 into the document number field in E-Verify. Employers should enter May 25, 2025, as the expiration date for an EAD that has been extended under this **Federal Register** notice.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?

E-Verify automated the verification process for TPS-related EADs that are automatically extended. If you have an employee who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. Before this employee starts work on May 26, 2025, you must reverify their employment authorization on Form I–9. Employers may not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in many languages. Employers may also email IER at *IER@usdoj.gov* or get more information online at *https://www.justice.gov/ier.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls in English, Spanish and many other languages. Employees or job applicants may also call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in many languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I–9 Instructions. Employers may not require extra or additional documentation other than what is required to complete Form I–9. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (mismatch) must promptly inform employees of the mismatch and give these employees an opportunity to resolve the mismatch. A mismatch means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a mismatch while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result occurs if E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *https://www.justice.gov/ier* and the USCIS and E-Verify websites at *https://www.uscis.gov/i-9-central* and *https://www.e-verify.gov*.

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, if you present an automatically extended EAD referenced in this **Federal Register** notice, you do not need to show any other document, such as a Form I–797C, Notice of Action, reflecting receipt of a Form I–765 EAD renewal application or this **Federal Register** notice, to prove that you qualify for this extension. While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each State may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary or applicant, show you are authorized to work based on TPS or other status, or that may be used by DHS to determine if you have TPS or another immigration status. Examples of such documents are:

- Your current EAD with a TPS category code of A–12 or C–19, even if your country of birth noted on the EAD does not reflect the TPS-designated country of Burma;
- Your Form I–94, Arrival/Departure Record;
- Your Form I–797, Notice of Action, reflecting approval of your Form I–765; or
- Form I–797 or Form I–797C, Notice of Action, reflecting approval or receipt of a past or current Form I–821, if you received one from USCIS.

Check with the government agency requesting documentation about which document(s) the agency will accept.

Some State and local government agencies use SAVE to confirm the current immigration status of applicants

for public benefits. While SAVE can verify that an individual has TPS or a pending TPS application, each agency's procedures govern whether they will accept an unexpired EAD, Form I–797, Form I–797C, or Form I–94. If an agency accepts the type of TPS-related document you present, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

a. Give the agency a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your A-Number, USCIS number, or Form I–94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at *https://save.uscis.gov/casecheck/*. CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (such as your A-Number, USCIS number, or Form I–94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must allow you to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, *https://www.uscis.gov/save,* has detailed information on how to correct or update your immigration record, make an appointment, or submit a written request to correct records.

[FR Doc. 2024–06104 Filed 3–22–24; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2024–N018; FXES11130500000–245–FF05E00000]

Endangered 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 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 the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive any written comments on or before April 24, 2024.

ADDRESSES: Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant's name and application number (*e.g.,* PER0001234):

- *Email: permitsR5ES@fws.gov.*
- *U.S. Mail:* Abby Goldstein, Ecological Services, U.S. Fish and Wildlife Service, 300 Westgate Center Dr., Hadley, MA 01035.

FOR FURTHER INFORMATION CONTACT: Abby Goldstein, 413–253–8212 (phone), or *permitsR5ES@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 the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species, unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. 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

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER7305940–0	Robert E. Adelstein, Huntington, WV.	Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), gray bat (*Myotis grisescens*), tricolored bat (*Perimyotis subflavus*).	Alabama, Arkansas, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, New Mexico, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Capture, band, telemetry, nonintrusive measurements, release.	Capture, collect.	New.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER1745522–1	Zeinab Haidar, Arcata, CA.	Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), gray bat (*Myotis grisescens*), tricolored bat (*Perimyotis subflavus*).	Add: Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Wisconsin, and Wyoming.	Capture, band, telemetry, nonintrusive measurements, wing punch, release.	Capture, collect.	Amend.
PER1541934–1	Audubon Sea bird Institute, Bremen, ME; Donald Lyons.	Roseate tern (*Sterna dougallii dougallii*).	Add: New Hampshire	Capture and band adults and chicks, telemetry, research, release.	Capture	Amend.
PER8719125–0	Audubon Sea Bird Institute, Bremen, ME; Donald Lyons.	Roseate tern (*Sterna dougallii dougallii*).	Maine	Capture and band adults and chicks, mark chicks, release, salvage.	Capture	New.
PER9408441–0	Luke Fultz, Huntingdon, PA.	Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), gray bat (*Myotis grisescens*).	Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin.	Capture, band, telemetry, non-intrusive measurements, light-tag, release.	Capture, collect, wound.	New.
ES37632D–1	U.S. Forest Service, Monongahela National Forest, Bartow, WV; Chad Landress.	Candy darter (*Etheostoma osburni*).	West Virginia	Electrofish, survey, monitor, release.	Capture	Renew.
PER8716069–0	West Virginia Department of Environmental Protection, Charleston, WV; Gary Rogers.	Candy darter (*Etheostoma osburni*).	West Virginia	Electrofish, fin clip, release.	Capture, collect.	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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. 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.

Next Steps

If we decide to issue permits to the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martin Miller,

Manager, Division of Endangered Species, Ecological Services, Northeast Region.

[FR Doc. 2024–06220 Filed 3–22–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2024–0009]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Vineyard Northeast Project on the U.S. Outer Continental Shelf Offshore Massachusetts

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement; request for comments.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces its intent to prepare an environmental impact statement (EIS) for a construction and operations plan (COP) of a proposed offshore wind energy project submitted by Vineyard Northeast, LLC (Vineyard Northeast). This notice of intent (NOI) initiates the public scoping and comment process under the National Environmental Policy Act (NEPA), section 106 of the National Historic Preservation Act (NHPA), and their respective implementing regulations. Vineyard Northeast proposes to construct and operate the project in Renewable Energy Lease Area OCS–A 0522 (Lease Area), which encompasses approximately 132,370 acres and is located approximately 29 miles from Nantucket and approximately 39 miles from Martha's Vineyard, offshore of Massachusetts. Vineyard Northeast proposes to develop the entire Lease Area.

DATES: Your comments must be received by BOEM no later than May 9, 2024 for timely consideration. BOEM will hold two in-person and two virtual public scoping meetings at the following dates and times (eastern time):

In Person:

- Wednesday, April 17, 2024, 5 p.m.–9 p.m., Clark Auditorium, Mitchell

College, 437 Pequot Avenue, New London, Connecticut 06320; and

- Thursday, April 18, 2024, 5 p.m.–9 p.m., Westport High School Cafeteria, 17 Main Road, Westport, Massachusetts 02790.

Virtual:

- Monday, April 15, 2024, 1 p.m.–ending; and
- Monday, April 22, 2024, 5 p.m.–ending.

Registration for the virtual public meetings may be completed here: *https://www.boem.gov/renewable-energy/state-activities/vineyard-northeast* or by calling (888) 788–0099 (toll free). Registration for in-person meetings will occur on site. The meetings are open to the public and free to attend.

ADDRESSES: Written comments can be submitted in any of the following ways:

- Delivered by U.S. mail or other delivery service, enclosed in an envelope labeled ''Vineyard Northeast EIS'' and addressed to Heather Schultz, NEPA Coordinator, Environment Branch for Renewable Energy, Bureau of Ocean Energy Management, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166; or
- *Through the regulations.gov web portal:* Navigate to *https://www.regulations.gov* and search for Docket No. BOEM–2024–0009. Select the document in the search results on which you want to comment, click on the ''Comment'' button, and follow the online instructions for submitting your comment. A commenter's checklist is available on the comment web page. Enter your information and comment, then click ''Submit.''

For more information about submitting comments, please see the ''Public Participation'' heading under **SUPPLEMENTARY INFORMATION.**

Detailed information about the proposed Project, including the COP, and instructions for making written comments, can be found on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/vineyard-northeast.*

FOR FURTHER INFORMATION CONTACT: Heather Schultz, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166, telephone (571) 396–1485, or email *heather.schultz@boem.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of and Need for the Proposed Action

In Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad,'' issued on January 27, 2021, President Joseph R. Biden stated that the policy of his administration is ''to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.''

Through a competitive leasing process conducted under 30 CFR 585.211, BOEM awarded Vineyard Northeast the Lease Area OCS–A 0522, covering an area on the Outer Continental Shelf (OCS) offshore Massachusetts. Vineyard Northeast has the exclusive right to submit a COP for activities within the Lease Area. Vineyard Northeast has submitted a COP to BOEM proposing the construction, operation, and conceptual decommissioning of an offshore wind energy facility in Lease Area OCS–A 0522 (the Project).

Vineyard Northeast's goal is to develop a commercial-scale, offshore wind energy project in the Lease Area. The proposed action includes a maximum of 160 positions occupied by up to 160 WTGs and up to 3 ESPs, or some combination thereof, within the Lease Area. Up to three of those positions would be occupied by ESPs and the remaining positions would be occupied by WTGs. In addition, the proposed action includes a potential booster station in the northwestern part of Lease Area OCS–A 0534. Three ESP concepts are included in the project design envelope: high voltage, direct current (HVDC) ESP; high voltage, alternating current ESP + booster station; and integrated ESP. If two or three ESPs are used, they may be co-located at the same grid position (co-located ESPs would only be installed on monopiles).

The integrated ESP concept entails placing ESP equipment on one or more expanded WTG foundation platforms rather than having a separate ESP situated on its own foundation. With this concept, the ESP electrical equipment may be placed on numerous (*i.e.,* more than three) WTG foundations.

The proposed project would have a minimum nameplate capacity of 2,600 megawatts (MW) and two offshore export cable corridors (OECCs)—one to Connecticut and one to Massachusetts—and associated onshore transmission systems.

Vineyard Northeast is actively seeking one or more offshore renewable energy certificate (OREC) or power purchase agreement (PPA) awards for this project. Vineyard Northeast is seeking approval of phase 1 in this COP, and the EIS to which this NOI applies covers only phase 1 as described above.

Vineyard Northeast has also provided BOEM with a high-level description of potential future activities they may undertake as a latter phase 2. However, those activities are not under consideration in this EIS and are not subject to a final BOEM decision on this COP. Rather, phase 2 is discussed as a potential future activity for which Vineyard Northeast would need to submit a revised or additional COP, which would be subject to additional review under NEPA and other relevant laws.

This proposed Project is intended to contribute to Connecticut's mandate of 2,000 MW of offshore wind energy by 2030, as outlined in Connecticut Public Act 19–71, and to Massachusetts's goal to solicit proposals to contract for 5,600 MW of offshore wind energy by 2027, a goal that was substantially increased from the 1,600 MW target announced in the 2016 Act to Promote Energy Diversity (in accordance with section 83C of Massachusetts's Green Communities Act as added by Chapter 188 of the Acts of 2016, An Act to Promote Energy Diversity [section 83C]). This Project may also contribute to the clean energy mandates of Rhode Island (pursuant to the Affordable Clean Energy Security Act, R.I. Gen. Laws 39–31–5, as amended effective July 1, 2022) and New York State (pursuant to the Climate Leadership and Community Protection Act).

Based on BOEM's authority under the Outer Continental Shelf Lands Act (OCSLA) to authorize renewable energy activities on the OCS, Executive Order 14008, and the goal of the administration to deploy 30 gigawatts (GW) of offshore wind in the United States by 2030, while protecting biodiversity and promoting ocean co-use,[1] and in consideration of the goals of the applicant, the purpose of BOEM's action is to determine whether to approve, approve with modifications, or disapprove Vineyard Northeast's COP. BOEM will make this determination

[1] *Fact Sheet:* Biden Administration Jumpstarts Offshore Wind Energy Projects to Create Jobs | Interior, Energy, Commerce, and Transportation Departments Announce New Leasing, Funding, and Development Goals to Accelerate and Deploy Offshore Wind Energy and Jobs | The White House *https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/29/fact-sheet-biden-administration-jumpstarts-offshore-wind-energy-projects-to-create-jobs/.*

after weighing the factors in subsection 8(p)(4) of OCSLA that are applicable to plan decisions and in consideration of the above goals. BOEM's action is needed to fulfill its duties under the lease, which require BOEM to make a decision on the lessee's plan to construct and operate a commercial-scale offshore wind energy facility in the Lease Area, in accordance with the relevant regulations in 30 CFR part 585.

In addition, the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS) anticipates one or more requests for authorization under the Marine Mammal Protection Act (MMPA) to take marine mammals incidental to construction activities related to the Project. NMFS' issuance of an MMPA incidental take authorization would be a major Federal action connected to BOEM's action (40 CFR 1501.9(e)(1)). The purpose of the NMFS action—which is a direct outcome of Vineyard Northeast's request for authorization to take marine mammals incidental to specified activities associated with the proposed Project (*e.g.,* pile driving)—is to evaluate Vineyard Northeast's request pursuant to specific requirements of the MMPA and its implementing regulations administered by NMFS, considering impacts of the applicant's activities on relevant resources, and if appropriate, issue the permit or authorization. NMFS needs to render a decision regarding the request for authorization due to NMFS' responsibilities under the MMPA (16 U.S.C. 1371(a)(5)(A)) and its implementing regulations. If NMFS makes the findings necessary to issue the requested authorization, NMFS intends to adopt, after independent review, BOEM's EIS to support that decision and fulfill its NEPA requirements.

The U.S. Army Corps of Engineers (USACE) New England District anticipates requests for authorizing a permit action to be undertaken through authority delegated to the District Engineer by 33 CFR 325.8, under section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. 403), section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344), and, as required, section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413). In addition, it is anticipated that a section 408 permission may be required pursuant to section 14 of the RHA (33 U.S.C. 408) for any proposed alterations that have the potential to alter, occupy, or use any federally authorized civil works projects. The USACE considers issuance of permits/permissions under these four delegated authorities to be a major Federal action connected to BOEM's action (40 CFR 1501.9(e)(1)). The need for the project, as provided by the applicant in section 1.2 of the COP and reviewed by USACE for NEPA purposes, is to provide a commercially viable offshore wind energy project within Lease OCS–A 0522 to meet northeastern states' and other users' demand for clean energy. The basic project purpose, as determined by USACE for section 404(b)(1) guidelines evaluation, is offshore wind energy generation. The overall project purpose for section 404(b)(1) guidelines evaluation, as determined by USACE, is the construction and operation of a commercial-scale offshore wind energy project for renewable energy generation in Lease OCS–A 0522 within the Massachusetts Wind Energy Area and transmission/distribution to the Connecticut and Massachusetts energy grids.

The purpose of USACE section 408 action as determined by Engineer Circular 1165–2–220 is to evaluate the applicant's request and determine whether the proposed alterations are injurious to the public interest or impair the usefulness of a USACE project. USACE section 408 permission is needed to ensure that congressionally authorized projects continue to provide their intended benefits to the public.

USACE intends to adopt BOEM's EIS to support its decision on any permits and permissions requested under section 10 of the RHA, section 404 of the CWA, section 14 of the RHA, and section 103 of the MPRSA. The USACE would adopt the EIS per 40 CFR 1506.3 if, after its independent review of the document, it concludes that the EIS satisfies the USACE's comments and recommendations. Based on its participation as a cooperating agency and its consideration of the final EIS, the USACE would issue a record of decision to formally document its decision on the proposed action.

Proposed Action and Preliminary Alternatives

Vineyard Northeast proposes to develop, construct, and operate offshore renewable wind energy facilities BOEM Lease Area OCS–A 0522 along with associated offshore and onshore transmission systems. The proposed action includes a maximum of 160 positions occupied by up to 160 WTGs and up to 3 ESPs, or some combination thereof, within the Lease Area. Up to three of those positions would be occupied by ESPs and the remaining positions would be occupied by WTGs. In addition, the proposed action includes a potential booster station in the northwestern aliquot of Lease Area OCS–A 0534. Two offshore OECCs—the Massachusetts OECC and the Connecticut OECC—would connect the renewable wind energy facilities to onshore transmission systems in Massachusetts and Connecticut.

Vineyard Northeast is considering monopile and piled-jacket foundation types to support the WTGs and ESPs. Each ESP and booster station topside would be supported by a monopile or a piled jacket foundation. The ESP(s) may be located at any proposed position. If two or three ESPs are used, they may be located at separate positions or two of the ESPs may be co-located at one of the potential grid positions. Up to two HVDC cable bundles or up to three high voltage alternating current (HVAC) cables may be installed within the Massachusetts OECC. Up to two HVDC offshore export cable bundles may be installed within the Connecticut OECC. If HVAC offshore export cables are installed within the Massachusetts OECC, the cables would connect to the above-noted booster station.

BOEM will evaluate reasonable alternatives to the proposed action that are identified during the scoping period and included in the draft EIS, including a No Action Alternative. Under the No Action Alternative, BOEM would disapprove the Vineyard Northeast COP, and the proposed wind energy facility described in the COP would not be built within the Lease Area.

In addition to the proposed action and the no action alternative (*i.e.,* disapproval of the COP), potential alternatives that the draft EIS could analyze include the following preliminary alternatives:

- *Modified Layout Alternative:* Design layout to minimize potential impacts to cultural, visual, navigation, and other resource values.
- *Nantucket Shoals Minimization Alternative:* BOEM intends to design an alternative to avoid and minimize potential impacts to protected species and habitats around Nantucket Shoals.
- *Habitat/Fisheries Impact Minimization Alternative:* BOEM intends to examine alternatives that would reduce potential impacts to fish habitats and fishing activities.

After completing the EIS and associated consultations, BOEM will decide through a record of decision (ROD) whether to approve, approve with modification, or disapprove the Vineyard Northeast Project COP. If BOEM approves the COP, Vineyard Northeast must comply with all conditions of approval.

Summary of Potential Impacts

The draft EIS will identify and describe the potential effects of the proposed action and the alternatives on the human environment. Those potential effects must be reasonably foreseeable and must have a reasonably close causal relationship to the proposed action and the alternatives. Such effects include those that occur at the same time and place as the proposed action and alternatives, as well as those that are later in time or occur in a different place. Potential effects include, but are not limited to, beneficial or adverse impacts on: air quality, water quality, bats, benthic habitat, essential fish habitat, invertebrates, finfish, birds, marine mammals, terrestrial and coastal habitats and fauna, sea turtles, wetlands and other waters of the United States, commercial fisheries and for-hire recreational fishing, cultural resources, Tribal issues of concern, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other marine uses, recreation and tourism, and visual resources. These potential effects will be analyzed in the draft and final EIS.

Based on a preliminary evaluation of the resources listed in the preceding paragraph, BOEM expects potential impacts on sea turtles and marine mammals from underwater noise caused by construction and from collision risks with Project-related vessel traffic. Structures installed by the Project could permanently change benthic and fish habitats (*e.g.,* creation of artificial reefs). Commercial fisheries and for-hire recreational fishing could be impacted. Project structures above the water could affect the visual character defining historic properties and recreational and tourism areas. Project structures also would pose an allision and height hazard to vessels passing close by, and vessels would, in turn, pose a hazard to the structures. Additionally, the Project could cause conflicts with military activities, air traffic, land-based radar services, cables and pipelines, and scientific surveys. The EIS will analyze all significant impacts, as well as potential measures that would avoid, minimize, or mitigate identified non-beneficial impacts.

Beneficial impacts are also expected by facilitating achievement of State renewable energy goals, increasing job opportunities, improving air quality, and addressing climate change. The construction of Vineyard Northeast is also estimated to generate at least ~$1.63 billion in total labor income and ~$4.65 billion in output. The operation of Vineyard Northeast is projected to generate approximately 17,046 full-time equivalent (FTE) job-years assuming a 30-year operational life (equivalent to 568 direct, indirect, and induced FTEs annually), as well as at least ~$1.19 billion in total annual labor income and ~$4.62 billion in output.

(i) Anticipated Permits and Authorizations

In addition to the requested COP approval, various other Federal, State, and local authorizations will be required for the Project. Applicable Federal laws include the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, MMPA, RHA, CWA, Clean Air Act section 328, and the Coastal Zone Management Act. BOEM will also conduct government-to-government Tribal consultations. For a detailed listing of regulatory requirements applicable to the Project, please see the COP, Volume I, available at *https://www.boem.gov/renewable-energy/state-activities/vineyard-northeast.*

(ii) BOEM has chosen to use the NEPA process to fulfill its obligations under the NHPA. While BOEM's obligations under the NHPA and NEPA are independent, regulations implementing section 106 of the NHPA allow the NEPA process and documentation to substitute for various aspects of the NHPA review. See 36 CFR 800.8(c). This process is intended to improve efficiency, promote transparency and accountability, and support a broadened discussion of potential effects that the Project could have on the human environment. During preparation of the EIS, BOEM will ensure that the NEPA process will fully meet all NHPA obligations.

(iii) Schedule for the Decision-Making Process

After the draft EIS is completed, BOEM will publish a notice of availability (NOA) and request public comments on the draft EIS. BOEM currently expects to issue the NOA for the draft EIS in May 2025. After the public comment period ends, BOEM will review and respond to comments received and will develop the final EIS. BOEM currently expects to make the final EIS available to the public in February 2026. A ROD will be completed no sooner than 30 days after the final EIS is released, in accordance with 40 CFR 1506.11.

This Project is a ''covered project'' under section 41 of the Fixing America's Surface Transportation Act (FAST–41). FAST–41 provides increased transparency and predictability by requiring Federal agencies to publish comprehensive permitting timetables for all covered projects. FAST–41 also provides procedures for modifying permitting timetables to address the unpredictability inherent in the environmental review and permitting process for significant infrastructure projects. To view the FAST–41 Permitting Dashboard for the Project, visit: *https://www.permits.performance.gov/permitting-project/fast-41-covered-projects/vineyard-northeast.*

Scoping Process

This NOI commences the public scoping process to identify issues and potential alternatives for consideration in the Vineyard Northeast EIS. BOEM will hold two in-person and two virtual public scoping meetings at the times and dates described above under the **DATES** heading. Throughout the scoping process, Federal agencies, Tribes, State and local governments, and the public will have the opportunity to help BOEM identify significant resources and issues, impact-producing factors, reasonable alternatives (*e.g.,* size, geographic, seasonal, or other restrictions on the construction and siting of facilities and activities), and potential mitigation measures to be analyzed in the EIS, as well as to provide additional information.

As noted above, BOEM will use the NEPA process to comply with the NHPA. BOEM will consider all written requests from individuals and organizations to participate as consulting parties under the NHPA and, as discussed below, will determine who among those parties will be a consulting party in accordance with NHPA regulations.

NEPA Cooperating Agencies

BOEM invites other Federal agencies and State and local governments to consider becoming cooperating agencies and invites federally recognized Tribes to become cooperating Tribal governments in the preparation of this EIS. The Council on Environmental Quality (CEQ) NEPA regulations specify that cooperating agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and should be aware that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process.

BOEM has provided potential cooperating agencies with a written

summary of expectations for cooperating agencies, including schedules, milestones, responsibilities, scope and detail of cooperating agencies' expected contributions, and availability of pre-decisional information. BOEM anticipates that this summary will form the basis for a memorandum of agreement between BOEM and any non-Department of the Interior cooperating agency. Agencies should also consider the factors for determining cooperating agency status in the CEQ memorandum entitled ''Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act,'' dated January 30, 2002. This document is available at: *https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CoopAgenciesImplem.pdf.* BOEM, as the lead agency, does not provide financial assistance to cooperating agencies.

Governmental entities that are not cooperating agencies will have opportunities to provide information and comments to BOEM during the public input stages of the NEPA process.

NHPA Consulting Parties

Individuals and organizations with a demonstrated interest in the Project can request to participate as NHPA consulting parties under 36 CFR 800.2(c)(5) based on their legal or economic stake in historic properties affected by the Project.

Before issuing this NOI, BOEM compiled a list of potential consulting parties and invited them to become consulting parties. To become a consulting party, those invited must respond in writing by the requested response date.

Interested individuals and organizations that did not receive a written invitation can request to be consulting parties by writing to the staff NHPA contact at SWCA Environmental Consultants (SWCA), the third-party EIS contractor supporting BOEM in its administration of this review. SWCA's NHPA contact for this review is Jonathan Libbon at *JLibbon@swca.com.* BOEM will determine which interested parties should be consulting parties.

Public Participation

Federal agencies, Tribes, State and local governments, and other interested parties are requested to comment on the scope of this EIS, significant issues that should be addressed, and alternatives that should be considered.

Information on Submitting Comments

a. Freedom of Information Act

BOEM will protect privileged or confidential information that you submit when required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly label it and request that BOEM treat it as confidential. BOEM will not disclose such information if BOEM determines under 30 CFR 585.114(b) that it qualifies for exemption from disclosure under FOIA. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release.

BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such privileged or confidential information.

b. Personally Identifiable Information (PII)

BOEM discourages anonymous comments. Please include your name and address as part of your comment. You should be aware that your entire comment, including your name, address, and any other personally identifiable information included in your comment, may be made publicly available. All comments from individuals, businesses, and organizations will be available for public viewing on *regulations.gov.*

For BOEM to consider withholding your PII from disclosure, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. Even if BOEM withholds your information in the context of this notice, your submission is subject to FOIA. If your submission is requested under FOIA, your information will only be withheld if a determination is made that one of FOIA's exemptions to disclosure applies. Such a determination will be made in accordance with the Department of the Interior's FOIA regulations and applicable law.

c. Section 304 of the NHPA (54 U.S.C. 307103(a))

After consultation with the Secretary, BOEM is required to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under section 304 of the NHPA as confidential.

(iv) Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

BOEM requests data, comments, views, information, analysis, alternatives, or suggestions relevant to the proposed action from: the public; affected Federal, Tribal, State, and local governments, agencies, and offices; the scientific community; industry; or any other interested party. Specifically, BOEM requests information on the following topics:

1. Potential effects on biological resources, including bats, birds, coastal fauna, finfish, invertebrates, essential fish habitat, marine mammals, and sea turtles.

2. Potential effects on physical resources and conditions including air quality, water quality, wetlands, and other waters of the United States.

3. Potential effects on socioeconomic and cultural resources, including commercial fisheries and for-hire recreational fishing, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other uses (marine minerals, military use, aviation), recreation and tourism, and scenic and visual resources.

4. Other possible reasonable alternatives to the proposed action that BOEM should consider, including additional or alternative avoidance, minimization, and mitigation measures.

5. As part of its compliance with NHPA section 106 and its implementing regulations (36 CFR part 800), BOEM seeks comment and input from the public and consulting parties regarding the identification of historic properties within the proposed action's area of potential effects, the potential effects on those historic properties from the activities proposed in the COP, and any information that supports identification of historic properties under NHPA. BOEM also solicits proposed measures to avoid, minimize, or mitigate any adverse effects on historic properties. BOEM will present available

information regarding known historic properties during the public scoping period at *https://www.boem.gov/renewable-energy/state-activities/vineyard-northeast.* BOEM's effects analysis for historic properties will be available for public and consulting party comment with the draft EIS.

6. Information on other current or planned activities in, or in the vicinity of, the Project, their possible impacts on the Project, and the Project's possible impacts on those activities.

7. Other information relevant to the proposed action and its impacts on the human environment.

To promote informed decision-making, comments should be as specific as possible and should provide as much detail as necessary to meaningfully and fully inform BOEM of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and possible alternatives to the proposed action, as well as economic, employment, and other impacts affecting the quality of the human environment.

The draft EIS will include a summary of all alternatives, information, and analyses submitted during the scoping process for consideration by BOEM and the cooperating agencies.

(Authority: 42 U.S.C. 4321 *et seq.,* and 40 CFR 1501.9)

Karen Baker,

Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2024–06161 Filed 3–22–24; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–24–013]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 29, 2024 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–706–709 and 731–TA–1667–1672 (Preliminary) (Melamine from Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago). The Commission currently is scheduled to complete and file its determinations on April 1, 2024; views of the Commission currently are scheduled to be completed and filed on April 8, 2024.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 20, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–06297 Filed 3–21–24; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1340]

Importer of Controlled Substances Application: Caligor Coghlan Pharma Services

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Caligor Coghlan Pharma Services has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 24, 2024. Such persons may also file a written request for a hearing on the application on or before April 24, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 5, 2024, Caligor Coghlan Pharma Services, 1500 Business Park Drive, Unit B, Bastrop, Texas 78602, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocyn	7438	I

The company plans to import the listed controlled substance as finished dosage units for use in clinical trials. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–06178 Filed 3–22–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1334]

Importer of Controlled Substances Application: Hybrid Pharma

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Hybrid Pharma has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION**

listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 24, 2024. Such persons may also file a written request for a hearing on the application on or before April 24, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on January 22, 2024, Hybrid Pharma, 1015 West Newport Center Drive, Suite 106A, Deerfield Beach, Florida 33442–7707, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Dimethyltryptamine	7435	I

The company plans to import the listed controlled substance for the compounding of dosage units to be used in clinical trials. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–06188 Filed 3–22–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1342]

Bulk Manufacturer of Controlled Substances Application: Purisys, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Purisys, LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 24, 2024. Such persons may also file a written request for a hearing on the application on or before May 24, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on February 8, 2024, Purisys, LLC, 1550 Olympic Drive, Athens, Georgia 30601–1602, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Cathinone	1235	I
Gamma Hydroxybutyric Acid	2010	I
Ibogaine	7260	I
Lysergic acid diethylamide	7315	I
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Mescaline	7381	I
2,5-Dimethoxyamphetamine	7396	I
3,4-Methylenedioxyamphetamine	7400	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
5-Methoxy-N,N-dimethyltryptamine	7431	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methyoxy-N,N-diisopropyltryptamine	7439	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Codeine-N-oxide	9053	I
Dihydromorphine	9145	I
Heroin	9200	I

Controlled substance	Drug code	Schedule
Hydromorphinol	9301	I
Morphine-N-oxide	9307	I
Normorphine	9313	I
Norlevorphanol	9634	I
Amphetamine	1100	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Pentobarbital	2270	II
Nabilone	7379	II
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Ecgonine	9180	II
Hydrocodone	9193	II
Levorphanol	9220	II
Meperidine	9230	II
Meperidine intermediate-A	9232	II
Meperidine intermediate-B	9233	II
Meperidine intermediate-C	9234	II
Methadone intermediate	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Opium tincture	9630	II
Opium, powdered	9639	II
Opium, granulated	9640	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Alfentanil	9737	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances for the production of active pharmaceutical ingredients (API) and analytical reference standards for sale to its customers. The company plans to manufacture the above listed controlled substances as clinical trial and starting materials to make compounds for distribution to its customers. No other activities for these drug codes are authorized for this registration.

Marsha Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–06185 Filed 3–22–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1335]

Importer of Controlled Substances Application: Stepan Company

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Stepan Company has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 24, 2024. Such persons may also file a written request for a hearing on the application on or before April 24, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on January 26, 2024, Stepan Company, 100 West Hunter Avenue, Maywood, New Jersey 07607–1021, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Coca Leaves	9040	II

The company plans to import the listed controlled substance to bulk manufacture other controlled substances for distribution to its customers. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–06177 Filed 3–22–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1343]

Importer of Controlled Substances Application: SpecGx LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: SpecGx LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 24, 2024. Such persons may also file a written request for a hearing on the application on or before April 24, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on January 24, 2024, SpecGx LLC, 3600 North 2nd Street, Saint Louis, Missouri 63147–3457, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Phenylacetone	8501	II
Coca Leaves	9040	II
Thebaine	9333	II
Opium, raw	9600	II
Poppy Straw Concentrate	9670	II
Tapentadol	9780	II

The company plans to import the listed controlled substances for bulk manufacture into Active Pharmaceutical Ingredients (API) for distribution to its customers. In reference to Tapentadol (9780) and Thebaine (9333), the company plans to import intermediate forms of these controlled substances for further manufacturing prior to distribution to its customers. No other activity for these drugs is authorized for this registration. Placement of these codes onto the company's registration does not translate into automatic approval of subsequent permit applications to import controlled substances.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–06181 Filed 3–22–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1346]

Bulk Manufacturer of Controlled Substances Application: Restek Corporation

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Restek Corporation has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 24, 2024. Such persons may also file a written request for a hearing on the application on or before May 24, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on January 31, 2024, Restek Corporation, 110 Benner Circle, Bellefonte, Pennsylvania 16823–8433 applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
JWH–018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH–200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
CP–47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7297	I
CP–47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol)	7298	I
Lysergic acid diethylamide	7315	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
3,4-Methylenedioxyamphetamine	7400	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
Bufotenine	7433	I
Psilocybin	7437	I
Psilocyn	7438	I
Cyprenorphine	9054	I
Dihydromorphine	9145	I
Heroin	9200	I
Normorphine	9313	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I

The company plans to bulk manufacture the listed controlled substances for the Drug Enforcement Administration-exempted certified reference materials. In-house synthesis gives access to compounds that are difficult to source. In reference to drug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Marsha Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–06193 Filed 3–22–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1345]

Importer of Controlled Substances Application: Halo Pharmaceutical Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Halo Pharmaceutical Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 24, 2024. Such persons may also file a written request for a hearing on the application on or before April 24, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 21, 2024, Halo Pharmaceuticals Inc., 30 North Jefferson Road, Whippany, New Jersey 07981–1030, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I

The company plans to import the listed controlled substance to support formulation development and use in clinical trials. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–06190 Filed 3–22–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1344]

Bulk Manufacturer of Controlled Substances Application: Promega Corporation

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Promega Corporation has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to

SUPPLEMENTARY INFORMATION listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 24, 2024. Such persons may also file a written request for a hearing on the application on or before May 24, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on February 5, 2024, Promega Corporation, 3075 Sub Zero Parkway, Fitchburg, Wisconsin 53719, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to bulk manufacture the listed controlled substances as Active Pharmaceutical Ingredients (API) for sale to its customers. No other activities for these drug codes are authorized for this registration. No other activities for these drug codes are authorized for this registration.

Marsha Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–06189 Filed 3–22–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1338]

Bulk Manufacturer of Controlled Substances Application: Usona Institute, Inc

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Usona Institute, Inc has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 24, 2024. Such persons may also file a written request for a hearing on the application on or before May 24, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on February 2, 2024, Usona Institute, Inc, 2780 Woods Hollow Road, Room 2413, Fitchburg, Wisconsin 53711, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
5-Methoxy-N-N-dimethyltryptamine	7431	I
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to bulk manufacture the listed controlled substances for use in chemical process development as well as pre-clinical and clinical research. No other activities for these drug codes are authorized for this registration.

Marsha Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–06184 Filed 3–22–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1341]

Importer of Controlled Substances Application: Sharp Clinical Services, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Sharp Clinical Services, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 24, 2024. Such persons may also file a written request for a hearing on the application on or before April 24, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not

instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 13, 2024, Sharp Clinical Services, LLC, 2400 Baglyos Circle, Bethlehem, Pennsylvania 18020–8024, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
3,4-Methylenedioxy-methamphetamine.	7405	I
5-Methoxy-N-N-dimethyltryptamine.	7431	I

The company plans to import the listed controlled substances for distribution and clinical trials. No other activity for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–06179 Filed 3–22–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-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 24, 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: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection is associated with the hydrostatic testing of portable fire extinguishers. Persons performing the test are required to record their name, the date of the test, and the identifier of the extinguisher tested as evidence of completing the test. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 9, 2024 (89 FR 1128).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers.

OMB Control Number: 1218–0218.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 5,869,911.

Total Estimated Number of Responses: 5,217,699.

Total Estimated Annual Time Burden: 504,377 hours.

Total Estimated Annual Other Costs Burden: $210,664,596.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Certifying Official.

[FR Doc. 2024–06152 Filed 3–22–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Certification of Medical Necessity

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 24, 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: Michelle Neary by telephone at 202–693–6312, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Certificate of Medical Necessity is completed by the coal miner's doctor and is used by OWCP to determine if the miner meets impairment standards to qualify for durable medical equipment or home nursing. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 12, 2024 (89 FR 2255).

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) if the information will be processed and used in a timely manner; (3) 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; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Certification of Medical Necessity.

OMB Control Number: 1240–0024.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 1,500.

Total Estimated Number of Responses: 1,500.

Total Estimated Annual Time Burden: 563 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–06150 Filed 3–22–24; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2017–0005]

Electric Power Generation, Transmission, and Distribution Standards for Construction and General Industry and Electrical Protective Equipment Standards for Construction and General Industry; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Electric Power Generation, Transmission, and Distribution Standards for Construction and General Industry and Electrical Protective Equipment Standards for Construction and General Industry.

DATES: Comments must be submitted (postmarked, sent, or received) by May 24, 2024.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket 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 websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2017–0005) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The Electric Power Generation, Transmission, and Distribution Standards (29 CFR 1926 and 29 CFR 1910.269) and the Electrical Protective Equipment Standards (29 CFR 1926.97 and 29 CFR 1910.137) specify a number of collection of information requirements. The following describes the collection of information requirements contained in the standards.

Electric Power Generation, Transmission, and Distribution Standard (§§ 1926 and 1910.269).

For host employer responsibilities paragraphs 1910.269(a)(3)(i) and 1926.950(c)(1) for construction and general industry, before work begins, the host employer must inform the contract employers of: the characteristics of the host employer's installation listed; conditions listed in paragraphs of this section that are known to the host employer; information about the design and operation of the host employer's installation that the contract employer needs to make the assessments required by this section; and any other information about the design and operation of the host employer's installation that is known by the host employer, that the contract employer requests, that is related to the protection of the contract employer's employees.

For contract employer responsibilities paragraph 1910.269(a)(3)(ii) and 1926.950(c)(2) for construction and general industry, contract employers must ensure that each of the employees is instructed in the hazardous conditions relevant to the employee's work that the contract employer is aware of as a result of information communicated to the contract employer by the host employer; before work begins, the contract employer must advise the host employer of any unique hazardous conditions presented by the contract employer's work; and the contract employer must advise the host employer of any unanticipated hazardous conditions found during the contract employer's work that the host employer did not mention. The contract employer shall provide this information to the host employer within 2 working days after discovering the hazardous condition.

In job briefing the information provided by the employer in paragraphs 1910.269(1)(i) and 1926.952(a)(1) for construction and general industry, in assigning an employee or a group of employees to perform a job, the employer must provide the employee in charge of the job with all available information that relates to the determination of existing characteristics and conditions required.

For the engineering analyses to determine maximum anticipated per unit transient overvoltage in paragraphs 1910.269(l)(3)(ii) and 1926.960(c)(1)(ii) for construction and general industry, the employer must determine the maximum anticipated per-unit transient overvoltage, phase-to-ground, through an engineering analysis or assume a maximum anticipated per-unit transient overvoltage, phase-to-ground, in accordance with the tables listed. When the employer uses portable protective gaps to control the maximum transient overvoltage, the value of the maximum anticipated per-unit transient overvoltage, phase-to-ground, must provide for five standard deviations between the statistical sparkover voltage of the gap and the statistical withstand voltage corresponding to the electrical component of the minimum approach distance. The employer must make any engineering analysis conducted to determine maximum anticipated per-unit transient overvoltage available upon request to employees and to the Assistant Secretary or designee for examination and copying.

Electrical Protective Equipment Standard (§§ 1926.97 and 1910.137).

Testing Certification (§§ 1926.97(c)(2)(xii) and 1910.137(c)(2)(xii)).

Employers must certify that the electrical protective equipment used by their workers have passed the tests specified in paragraphs (c)(2)(vii)(D), (c)(2)(viii), (c)(2)(ix), and (c)(2)(xi) of the Standards. The certification must identify the equipment that passed the tests and the dates of the tests. The two standards require testing: periodically (generally, every 6 months for rubber insulating gloves and every 12 months for most other types of rubber insulating equipment); after any repairs; and before the equipment is returned to service after any inspection finds certain defects. In addition, the employer must test rubber insulating gloves before reuse after employees use them without protector gloves and must certify that testing. These performance-based standards ensure that employers maintain the most recent test records for equipment that passes the required test without specifying precisely how the employer must maintain those records.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extends the approval of the information collection requirements specified in the Electric Power Generation, Transmission, and Distribution Standards for Construction and General Industry and the Electrical Protective Equipment Standards for Construction and General Industry. The agency is requesting an adjustment increase in burden from 380,735 to 394,614 hours, a difference of 13,879 hours. This increase in burden is due to an increase in the number of projects and an increase in the number of establishments.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Electric Power Generation, Transmission, and Distribution Standards for Construction and General Industry and Electrical Protective Equipment for Construction and General Industry.

OMB Control Number: 1218–0253.

Affected Public: Business or other for-profits.

Number of Respondents: 21,396.

Number of Responses: 2,067,172.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 394,614.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer

than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA–2017–0005). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *https://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *https://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on March 18, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–06153 Filed 3–22–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0042]

TUV Rheinland of North America, Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of TUV Rheinland of North America, 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.

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 April 9, 2024.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2007–0042). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* 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.

Extension of comment period: Submit requests for an extension of the comment period on or before April 9, 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.francis2@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 TUV Rheinland of North America, Inc. (TUVRNA), is applying for an expansion of current recognition as a NRTL. TUVRNA requests the addition of two 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 a NRTL for initial recognition, as well as for an 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 the 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 TUVRNA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVRNA currently has ten facilities (sites) recognized by OSHA for product testing and certification, with the

headquarters located at: TUV Rheinland of North America, Inc., 295 Foster Street, Suite 100, Littleton, Massachusetts 01460. A complete list of TUVRNA sites recognized by OSHA is available at *https://www.osha.gov/nationally-recognized-testing-laboratory-program/tuv.*

II. General Background on the Application

TUVRNA submitted an application, dated June 7, 2023 (OSHA–2007–0042–0072), to expand recognition as a NRTL to include two additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 shows the test standards found in TUVRNA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 61010–2–051	Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–051: Particular Requirements for Laboratory Equipment for Mixing and Stirring.
UL 61010–2–061	Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–061: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.

III. Preliminary Finding on the Application

TUVRNA submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file and pertinent documentation preliminarily indicates that TUVRNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of the two test standards shown in Table 1, above, for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of TUVRNA's application.

OSHA seeks public comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. 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–2007–0042 (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. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant TUVRNA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

VI. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, 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 March 19, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–06154 Filed 3–22–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0040]

Concrete and Masonry Construction Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Concrete and Masonry Construction Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by May 24, 2024.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov*. Documents in the docket are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2010–0040) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of

this notice titled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements, the warning signs and barriers required by § 1926.701(c)(2) reduce exposure for non-essential workers to the hazards of post-tensioning operations. The principal hazards originate with failure of wire strands or metal rod tendons under tens of thousands of pounds tension. When strands or tendons fail and contract, they strike with catastrophic force against structures, materials, tools, and workers causing damage, serious injury, or death. The requirements to lock-out and tag-out bulk-storage ejection systems and other hazardous equipment (*e.g.,* compressors, mixers, screens, or pumps used for concrete and masonry construction) as specified by §§ 1926.702(a)(2) and (j)(1) and (2) prevent equipment from being unexpectedly operated and warn workers that others are on/in the equipment or facility performing tasks (*e.g.,* cleaning, inspecting, maintaining, repairing), where unexpected operation could cause serious injury or death.

Construction contractors and workers use the drawings, plans, and designs required by § 1926.703(a)(2) to provide specific instructions on how to construct, erect, brace, maintain, and remove shores and formwork if they pour concrete at the job site. Section 1926.705(b) requires employers to mark the rated capacity of jacks and lifting units. This requirement prevents overloading and subsequent collapse of jacks and lifting units, as well as their loads, thereby sparing exposed workers from serious injury or death.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in Concrete and Masonry Construction Standard. The agency is requesting an adjustment increase of 815 hours (from 22,968 to 23,783 hours). The increase in burden is due an increase in the total number of active construction sites for residential housing going from 1,378,095 to 1,427,000.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Concrete and Masonry Construction Standard.

OMB Control Number: 1218–0095.

Affected Public: Business or other for-profits.

Number of Respondents: 285,400.

Number of Responses: 285,400.

Frequency of Responses: Once.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 23,783.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR Docket No. OSHA–2010–0040). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at *https://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *https://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link.

Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on March 18, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–06151 Filed 3–22–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for NSF Regional Innovation Engines (NSF Engines) Program

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to establish this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by May 24, 2024, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E6400, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for the NSF Regional Innovation Engines (NSF Engines) Program.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not Applicable.

Type of Request: Intent to seek approval to establish an information collection.

Proposed Project

The CHIPS and Science Act of 2022 codified the National Science Foundation's cross-cutting Directorate for Technology, Innovation and Partnerships (TIP), NSF's first new directorate in more than 30 years, and charged it with the critical mission of advancing U.S. competitiveness through investments that accelerate the development of key technologies and address pressing national, societal, and geostrategic challenges.

The NSF Engines program was authorized in the CHIPS and Science Act of 2022 (Section 10388) to (1) advance multidisciplinary, collaborative, use-inspired and translational research, technology development, in key technology focus areas; (2) address regional, national, societal, or geostrategic challenges; (3) leverage the expertise of multidisciplinary and multi-sector partners, including partners from private industry, nonprofit organizations, and civil society organizations; and (4) support the development of scientific, innovation, entrepreneurial, and STEM educational capacity within the region of the Regional Innovation Engine to grow and sustain regional innovation. The NSF Engines program serves as a flagship funding program of the TIP directorate, with the goal of expanding and accelerating scientific and technological innovation within the United States by catalyzing regional innovation ecosystems throughout every region of our nation.

In January 2024, NSF established 10 inaugural NSF Engine awards across 18 states, uniquely placing science and technology leadership as the central driver for regional economic competitiveness. By way of example, the NSF Engines: Colorado-Wyoming Climate Resilience Engine, led by Rocky Mountain Innovation Initiative Inc., aims to advance the region's research and commercialization efforts focused on sensing, monitoring and predictive analytic technologies for climate resiliency spanning methane emissions, soil carbon capture, earth sensing, water scarcity, wildfires and extreme weather. The focus on climate resiliency derives from several climate emergencies that have hit the area from unprecedented wildfires to devastating droughts and heatwaves, and will leverage the region's robust startup ecosystem and research capacity. This Engine includes a large ecosystem of core partners that are essential to its success: large corporations; universities (including four- and two-year academic institutions, Tribal Colleges, and Hispanic-Serving Institutions); economic and workforce development organizations; non-profits; and investment firms. This diverse coalition of partners will be central to R&D, translation of technology to commercialization, and workforce development efforts.

Each Engine is focused on addressing specific aspects of a major national, societal and/or geostrategic challenge that are of significant interest in the NSF Engine's defined ''region of service.'' The NSF Engines program envisions a future in which all sectors of the American population can participate in, and benefit from, advancements in scientific research and development equitably to advance U.S. global competitiveness and leadership. The program's mission is to establish sustainable regional innovation ecosystems that address pressing regional, national, societal, or geostrategic challenges by advancing use-inspired and translational research and development in key technology focus areas. The programmatic level goals of NSF Engines are to:

Goal 1: Establish self-sustaining innovation ecosystems;

Goal 2: Establish nationally recognized regional ecosystems for key industries;

Goal 3: Broaden participation in inclusive innovation ecosystems;

Goal 4: Advance technologies relevant to national competitiveness;

Goal 5: Catalyze regions with nascent innovation ecosystems;

Goal 6: Increase economic growth;

Goal 7: Increase job creation.

To achieve these goals, each Engine will carry out an integrated and comprehensive set of activities spanning use-inspired research, translation-to practice, entrepreneurship, and workforce development to nurture and accelerate regional industries. In addition, each Engine is expected to embody a culture of innovation and have a demonstrated, intense, and meaningful focus on improving diversity throughout its regional science and technology ecosystem.

This request is to seek approval from OMB in establishing a new data collection pertaining to grantee reporting requirements for the NSF Engines program. The reporting requirements consist of: (1) Quarterly Reports; (2) a 5-year Strategic and Implementation Plan; and (3) Annual Evaluation Reports.

The *Quarterly Reports* will be required quarterly (every three months) with initial report due at month three (3); and the others at subsequent intervals of six (6) and nine (9). The report at month twelve (12) will cover the activities and outcomes for the entire year including the last quarter. The reporting will follow the same cadence until the end date of the project or the life of the award. NSF will use the collective Engine inputs from the reports in addition to the results of NSF's formal review of the required plans to determine eligibility for receiving the subsequent increment of NSF Engines funding. The *Quarterly Reports* contains 11 items, and grantees are required to include a brief description of the status with highlights of changes since the previous report and/or deviations from original plans outlined in the proposal. If there are no activities or outcomes to report for a certain item, the report shall note so for that item.

* i. *Governance and Management.* The staffing, activities, and effort associated with Governance and Management, *e.g.,* hiring, restructuring.

* ii. *Progress on the Engine's Five-year Strategic and Implementation Plan's component plans.* Activities undertaken toward developing and/or modifying the required component plans should be described, in addition to implementation and notable outcomes for each.

* iii. *Budget Expenditures.* Summary of budget expenditures for the specified quarterly reporting period(s). The report should include the above information at the six-month and one-year mark, each covering the two preceding quarters. This should include any rebudgeting in excess of 15% of the original plan or $100,000, whichever is greater, by the awardee or sub-awardee organized by programmatic core functions, *i.e.,* use-inspired R&D, workforce development, translation innovations to practice and subcategorized by NSF budget category (NSF form 1030). The cumulative amount should be compared against the planned budget for each reporting period. Variances from plans, positive or negative, and mitigation steps if needed, should be discussed.

* iv. *Research Security.* Research security efforts of the lead organization and sub-awardee organizations pertinent to the activities on the Engine award, if any.

* v. *Cybersecurity Incidents.* Description of all reportable cybersecurity incidents pertinent to the activities on the Engine award.

* vi. *Infrastructure construction, operations and maintenance (O&M), and sustainability plan.* Includes all costs and activities related to building construction, design and engineering services, and on-site costs, *e.g.,* prep costs including cleanup, legal services, etc. This also covers the development of shared research facilities, *i.e.,* any facility that will not be used exclusively for Engine activities. The O&M and sustainability plan for infrastructure should be included in the third quarterly report, and changes reported routinely in subsequent ones.

* vii. *R&D, Translation and Workforce Development Projects.* This section should provide a status update of all Engine-funded projects and initiatives, reported against the initial project milestones and/or objectives as outlined in approved strategic and implementation plans, including any Project Funding Competition Plans. Include notable outcomes from these activities. This section should cover the selection and termination of projects during the reporting period.

* viii. *Risk Assessment and Monitoring.* Within sixty (60) days of the award start date, a comprehensive formal risk assessment should be performed of the Engine using widely accepted standards with detail captured in a risk register, specifically any key risks identified and how those risks plan to be addressed, *e.g.,* mitigate, transfer, eliminate, accept. Status reporting of the identified risks shall be included in the quarterly reports to NSF.

* ix. *Core partners.* This section should document the changes to the set of core partners and any changes in the nature of the core partners' activities and commitments to the Engine.

* x. *Commitments and Resources.* This section should describe changes in commitments and resources made available to Engine activities by non-NSF sources. Include new commitments of cash and in-kind resources by such sources during this period, and the quantitative impact of these commitments to the three Engine core functions (use-inspired R&D, Translation, and Workforce Development).

* xi. *Progress of Meeting Award-Specific Terms and Conditions.* Each Engine award has a list of terms and conditions that are specific to the given award. In this section, Engines will describe progress on these items since the last reporting period.

The *Five (5)-year Strategic and Implementation Plan* shall be comprised of component plans (7) listed below. Each shall be tailored to the Engine's mission, operating structure, and region of service and cover the specified topical areas. Component plans must be submitted for NSF approval. The Component Plans should only be submitted once they are in a final form and ready for approval. After a plan has been submitted, NSF may review and provide feedback on the plan document, typically within sixty (60) days of submission. The awardee may be requested by NSF to revise and resubmit the plan, incorporating such feedback. NSF reserves the right to potentially continue this iterative process until 16-months post award start date, at which point the last submitted component plan will be deemed as the final version of the document that NSF shall consider for approval in line with the program goals. A more detailed set of expectations for each deliverable will be provided by the Program Officer post award.

- i. Engine Vision and Mission Statements (month 4)
- ii. Governance and Management
  - Governance and Management Plan (month 4)
  - Partnership Agreement (month 4)
  - Workforce Development Agreement (month 16)
  - IP Management Plan (month 4)
  - Financial and Resource Sustainability Plan (month 16)
- iii. Strengths, Weaknesses, Opportunities, and Threats (SWOT) Analyses for R&D and Translation, Workforce Development, and Inclusive Engagement (month 4)
- iv. Strategic Plans
  - For R&D and Translation (month 9)
  - For Workforce Development (month 16)
  - For Inclusive Engagement (month 12)
- v. Implementation Plans
  - For R&D and Translation (month 12)
  - For Workforce Development (month 16)
  - For Inclusive Engagement (month 12)
- vi. Evaluation Plan (month 9)
- vii. IP Agreements (month 10)
- viii. Benchmarks; Baselines; Specific, Measurable, Achievable, Relevant, and Timely (SMART) Objectives and Targets
  - For R&D and Translation (month 12)
  - For Workforce Development (month 16)
  - For Inclusive Engagement (month 16)

Engines awardees will publicly disseminate the following within 1 month of approval by NSF: a public version of their SWOT analyses; strategic plans; and implementation plans.

The first *annual evaluation report* is expected at month 18 from the award start date, and then annually thereafter for the life of the award. The report is prepared and submitted to NSF by an external evaluation team required of each Engine award. The report discusses progress relative to the milestones, baselines, benchmarks, objectives, and targets as listed in the corresponding 5-year strategic and implementation plan. The evaluation reports provide an objective and independent assessment of how each Engine is performing relative to their goals and milestones, and are not subject to approval by Engine awardees.

Information gathered will be used for the dual and interrelated purposes of disseminating information about the NSF Engines program and using this information to make programmatic improvements, efficiencies, and enhanced program monitoring for NSF Engines. Feedback collected under this clearance provides useful information for the continued evolution of the NSF Engines program. The collective reporting requirements will help TIP monitor the progress of individual Engines, identify trends over time, assess overall program performance.

Burden on the Public

For each Engine award, we anticipate the following number of responses and response burden by reporting requirement:

Reporting requirement	Number of responses (per year)	Frequency of data collection	Approximate lower bound response burden (hours)	Approximate upper bound response burden (hours)
Quarterly progress report	4	Quarterly	40	80.
Five-year strategic and implementation plan	1	Once a year	*Year 1:* 1,040	*Year 1:* 10,400.
			Year 2: 80	*Year 2:* 160.
			Year 3: 80	*Year 3:* 160.
Annual evaluation report	1	Once a year	200	1,040.

We estimated that, on average, each of the twenty components of the Five-year Strategic and Implementation Plan could take up to 520 hours to complete, hence the upper bound estimate of 10,400 hours per Engine. We also anticipate that each component of the Plan will be developed and completed by multiple and various team members within an Engine.

In addition, the upper bound estimate for the annual evaluation report reflects not only the effort for writing the report but also account for data cleaning, data analysis, and data visualization. We anticipate that the burden for subsequent years to be lower as workflow and cadence will be established after the first year.

A total of 10 Engine teams were awarded. For the first year, the total amount of burden estimated is between 1,280 and 11,520 hours per Engine. For subsequent years, 320 and 1,280 hours.

Dated: March 19, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–06183 Filed 3–22–24; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

[Docket ID: OPM–2024–0008]

Submission for Review: Establishment Information Form, DD 1918, Wage Data Collection Form, DD 1919, Wage Data Collection Continuation Form, DD 1919C, 3206–0036

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an existing information collection request (ICR): 3206–0036, Establishment Information Form (DD 1918), Wage Data Collection Form (DD 1919), and Wage Data Collection Continuation Form (DD 1919C).

DATES: Send comments on or before May 24, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *https://www.regulations.gov* without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, by telephone at (202) 606–2858 or by email at *paypolicy@opm.gov.*

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. OPM is 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 permitting electronic submissions of responses.

The Federal Wage System (FWS) is the pay system established under 5 U.S.C. 5341 *et seq.* for prevailing rate employees who work in trade, craft, and laboring occupations. The FWS establishes rates of pay for Federal prevailing rate employees through local wage surveys of private sector employers. The FWS includes 130 appropriated fund and 118

nonappropriated fund local wage areas. The Establishment Information Form, the Wage Data Collection Form, and the Wage Data Collection Continuation Form are wage survey forms developed by OPM based on recommendations of the Federal Prevailing Rate Advisory Committee for use by the Department of Defense to establish prevailing wage rates for FWS employees Governmentwide. The Establishment Information Form, the Wage Data Collection Form, and the Wage Data Collection Continuation Form are being submitted for renewal without any changes.

Analysis

Agency: Workforce Policy and Innovation, Pay, Leave, and Workforce Flexibilities, Office of Personnel Management.

Title: Establishment Information Form (DD 1918), Wage Data Collection Form (DD 1919), and Wage Data Collection Continuation Form (DD 1919C).

OMB Number: 3260–0036.

Frequency: Annually.

Affected Public: Private sector establishments.

Number of Respondents: 21,760.

Estimated Time per Respondent: 1.5 hours.

Total Burden Hours: 32,640.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–06195 Filed 3–22–24; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

[Docket ID: OPM–2024–0007]

Submission for Review: 3206–0174, Survivor Annuity Election for a Spouse, RI 20–63; Cover Letter Giving Information About the Cost To Elect Less Than the Maximum Survivor Annuity, RI 20–116; Cover Letter Giving Information About the Cost To Elect the Maximum Survivor Annuity, RI 20–117

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM), Retirement Services, offers the general public and other Federal agencies the opportunity to comment on an expiring information collection request (ICR): Survivor Annuity Election for a Spouse (RI 20–63), Cover Letter Giving Information about the Cost to Elect Less Than the Maximum Survivor Annuity (RI 20–116) and Cover Letter Giving Information About the Cost to Elect the Maximum Survivor Annuity (RI 20–117).

DATES: Comments are encouraged and will be accepted until May 24, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the 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 email to *RSPublicationsTeam@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 936–0401.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0174). OPM is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM'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 permitting electronic submissions of responses.

RI 20–63 is used by annuitants to elect a reduced annuity to provide a survivor annuity for a spouse acquired after retirement. RI 20–116 is a cover letter for RI 20–63 giving annuitants information about the cost for electing less than a maximum survivor annuity. This letter is used to supply information that may have been requested by the annuitant about the cost of electing less than the maximum survivor annuity. RI 20–117 is a cover letter for RI 20–63 giving information about the cost to elect a maximum survivor annuity.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Survivor Annuity Election for a Spouse/Cover Letter Giving Information about the Cost to Elect Less Than the Maximum Survivor Annuity/Cover Letter Giving Information about the Cost to Elect the Maximum Survivor Annuity.

OMB Number: 3206–0174.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: RI 20–63 = 2,400; RI 20–116 & RI 20–117 = 200.

Estimated Time per Respondent: 55 minutes [RI 20–63 = 45 min., RI 20–116 & 20–117 = 10 min.].

Total Burden Hours: 1,834.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–06194 Filed 3–22–24; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–209 and CP2024–215]

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 27, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by

telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

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.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–209 and CP2024–215; *Filing Title:* USPS Request to Add Priority Mail & Ground Advantage Contract 203 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 19, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* March 27, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–06223 Filed 3–22–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99777; File No. SR–BOX–2024–07]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Exchange Rule 5020 To Allow the Exchange To List and Trade Options on ETFs That Represent Interests in a Trust That Holds Bitcoin

March 19, 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 March 11, 2024, BOX Exchange LLC (''BOX'' 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 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 5020 to allow the Exchange to list and trade options on ETFs that represent interests in a trust that holds Bitcoin ETPs, designating them as ETFs deemed appropriate for options trading on the Exchange. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *https://rules.boxexchange.com/rulefilings.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BOX Rule 5020 (Criteria for Underlying Securities) to allow the Exchange to list and trade options on ETFs that represent interests in a trust that holds Bitcoin ETPs, designating them as ETFs deemed appropriate for options trading on the Exchange. This is a competitive filing that is based on proposals recently submitted by Cboe Exchange, Inc (''CBOE'') and Miami International Securities Exchange, LLC (''MIAX'').[3]

Current Exchange Rule 5020(h) provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include ETFs that represent certain types of interests,[4] including interests in

[3] *See* SR–CBOE–2024–005 *and* SR–MIAX–2024–03.

[4] *See* Exchange Rule 5020(h), which permits options trading on ETFs that (i) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the ''Financial Instruments'') and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); or (ii) represent interests in a trust that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to

certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).

Bitcoin ETPs are bitcoin-backed commodity ETPs structured as trusts.[5] Similar to any ETFs currently deemed appropriate for options trading under Exchange Rule 5020, the investment objective of a Bitcoin ETP trust is for its shares to reflect the performance of bitcoin (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to bitcoin without the complexities of bitcoin delivery. As is the case for ETFs currently deemed appropriate for options trading, a Bitcoin ETP's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of bitcoin and are designed to track bitcoin or the performance of the price of bitcoin and offer access to the bitcoin market.[6] Bitcoin ETPs provide investors with cost efficient alternatives that allow a level of participation in the bitcoin market through the securities market. The primary substantive difference between Bitcoin ETPs and ETFs currently deemed appropriate for options trading are that ETFs may hold securities, certain financial instruments, and specified precious metals (which are commodities), while Bitcoin ETPs hold bitcoin (which is also deemed a commodity).

The Exchange's initial listing standards for ETFs on which options may be listed and traded on the Exchange will apply to the Bitcoin ETPs. The Exchange expects Bitcoin ETPs to satisfy the initial listing standards as set forth in Exchange Rule 5020(a) and Exchange Rule 5020(h).

receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (''Currency Trust Shares''); or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool ETFs'') or (iv) represent interests in the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Gold Trust, the ETFS Silver trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust; provided that all of the conditions listed in (h)(1) and h(2) are met.

[5] The Exchange notes several filings to list and trade ETFs that hold bitcoin as NMS stocks (and registration statements for those Units) are currently pending with the Securities and Exchange Commission (the ''Commission''). Pursuant to the Exchange's Rules, the Exchange would only have authority to list and trade ETFs that are trading as NMS stocks.

[6] The trust may include minimal cash.

Pursuant to Exchange Rule 5020(a), a security (which includes ETFs) on which options may be listed and traded on the Exchange must be duly registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act,) and be characterized by a substantial number of outstanding shares that are widely held and actively traded.[7] Exchange Rule 5020(h) requires that ETFs must either (1) meet the criteria and standards set forth in Exchange Rule 5020(a) or Exchange Rule 5020(b), or (2) be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue ETFs in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus. The Exchange expects that Bitcoin ETPs would satisfy Exchange Rule 5020(h)(1).[8]

Options on Bitcoin ETPs will also be subject to the Exchange's continued listing standards set forth in Exchange Rule 5030(h), for ETFs deemed appropriate for options trading pursuant to Exchange Rule 5020(h). Specifically, Exchange Rule 5030(h) provides that ETFs that were initially approved for options trading pursuant to Exchange Rule 5020(h) shall be deemed not to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering that such ETFs, if the ETFs are delisted from trading pursuant to Exchange Rule 5030(b)(6), are halted or suspended from trading in their primary market. Additionally, options on ETFs may be subject to the suspension of opening transactions in any of the following circumstances: (1) in the case of options covering ETFs approved for trading under Exchange Rule 5020(h)(1), in accordance with the terms of paragraphs (b)(1), (2), and (3) of Exchange Rule 5030; (2) in the case of options covering ETFs approved for trading under Exchange Rule 5020(h)(1), following the initial twelve-month period beginning upon the commencement of trading in the ETFs on a national securities exchange and are defined as an NMS stock, there are fewer than 50 record and/or beneficial holders of such ETFs for 30 or more consecutive trading days; (3) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or financial instruments and money market instruments on which the Units are based is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on a Bitcoin ETP will be physically settled contracts with American-style exercise.[9] Consistent with current Exchange Rule 5050, which governs the opening of options series on a specific underlying security (including ETFs), the Exchange will open at least one expiration month for options on each Bitcoin ETP [10] at the

[7] As noted above, there are currently no Bitcoin ETPs trading as NMS stocks on a national securities exchange; however, registration statements and rule filings to list and trade several Bitcoin ETPs are currently pending with the Commission. *See* Securities Exchange Act Release No. 99306 (January 10, 2024) (citing all the proposed rule changes to list and trade Bitcoin ETPs on U.S. securities exchanges). The Exchange represents it would not list options on a Bitcoin ETP unless it satisfied the criteria in Exchange Rule 5020(a) the proposed listing criteria, and any other applicable listing criteria.

[8] *See, e.g.,* Form S–1 Registration Statement filed on November 29, 2023 (Registration No. 333–275781) (pending registration statement for shares of the Pando Asset Spot Bitcoin Trust); and Form S–1 Registration Statement filed on September 12, 2023 (Registration No. 333–274474) (pending registration statement for shares of the Franklin Bitcoin ETF).

[9] *See* Exchange Rule 5010, which provides that the rights and obligations of holders and writers are set forth in the Rules of the Options Clearing Corporation (''OCC''); *see also* OCC Rules, Chapters VIII (which governs exercise and assignment) and Chapter IX (which governs the discharge of delivery and payment obligations arising out of the exercise of physically settled stock option contracts).

[10] *See* Exchange Rule 5050(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Exchange Rule 5050 and its interpretive materials. Monthly listings expire the third Friday of the month. The term ''expiration date'' (unless separately defined elsewhere in the OCC By-Laws), when used in respect of an option contract (subject to certain exceptions), means the third Friday of the expiration month of such option contract, or if such Friday is a day on which the exchange on which such option is listed is not open for business, the preceding day on which such exchange is open for business. *See* OCC By-Laws Article I, Section 1. Pursuant to Exchange Rule 5050(c), additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices.

Continued

commencement of trading on the Exchange and may also list series of options on a Bitcoin ETP for trading on a weekly,[11] monthly,[12] or quarterly [13] basis. The Exchange may also list long-term equity option series (''LEAPS'') that expire from 12 to 180 months from the time they are listed.[14]

Pursuant to Exchange IM–5050–1(c), which governs strike prices of series of options on Trust Issued Receipts, the interval of strikes prices for series of options Bitcoin ETPs will be $1 or greater when the strike price is $200 or less and $5 or greater where the strike price is over $200.[15] Additionally, the Exchange may list series of options pursuant to the $1 Strike Price Interval Program,[16] the $0.50 Strike Program,[17] and the $2.50 Strike Price Program.[18] Pursuant to Exchange Rule 7050, where the price of a series of a Bitcoin ETP option is less than $3.00, the minimum increment will be $0.05, and where the price is $3.00 or higher, the minimum increment will be $0.10.[19] Any and all new series of Bitcoin ETP options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Rules 5050 and 7050, as applicable.

Bitcoin ETP options will trade in the same manner as any other ETF options on the Exchange. The Exchange Rules that currently apply to the listing and trading of all ETFs options on the Exchange, including, for example, Exchange Rules that govern listing criteria, expiration and exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures will apply to the listing and trading of Bitcoin ETPs on the Exchange in the same manner as they apply to other options on all other ETFs that are listed and traded on the Exchange, including the precious-metal backed commodity ETFs already deemed appropriate for options trading on the Exchange pursuant to current Exchange Rule 5020(h).

Position and exercise limits for options on ETFs, including options on Bitcoin ETPs, are determined pursuant to Exchange Rules 3120 and 3140, respectively. Position and exercise limits for ETFs options vary according to the number of outstanding shares and the trading volumes of the Underlying Security [20] over the past six months, where the largest in capitalization and the most frequently traded ETFs have an option position and exercise limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization Units have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market. The Exchange further notes that Exchange Rule 10120, which governs margin requirements applicable to trading on the Exchange, will also apply to the trading of Bitcoin ETP options.

The Exchange represents that the same surveillance procedures applicable to all other options on ETFs currently listed and traded on the Exchange will apply to options on Bitcoin ETPs, and that it has the necessary systems capacity to support the new option series. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading ETFs options, including precious metal-commodity backed ETFs options, as proposed. Also, the Exchange may obtain information from CME Group Inc.'s designated contract markets that are members of the Intermarket Surveillance Group related to any financial instrument that is based, in whole or in part, upon an interest in or performance of bitcoin, as applicable.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on Bitcoin ETPs up to the number of expirations currently permissible under the Rules. Because the proposal is limited to ETFs on a single commodity, the Exchange believes any additional traffic that may be generated from the introduction of Bitcoin ETP options will be manageable.

The Exchange believes that offering options on Bitcoin ETPs will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of bitcoin and hedging vehicle to meet their investment needs in connection with bitcoin related products and positions. The Exchange expects investors will transact in options on Bitcoin ETPs in the unregulated over-the-counter (''OTC'') options market (if the Commission approves Bitcoin ETPs for exchange-trading),[21] but may prefer to trade such options in a listed environment to receive the benefits of trading listing options, including (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing Bitcoin ETP options may cause investors to bring this liquidity to the Exchange, would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The ETFs that hold financial instruments, money market instruments, or precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as Bitcoin ETPs and essentially offer the same objectives and benefits to investors, just with respect to different assets. The Exchange notes that it has not identified any issues with the continued listing and trading of any ETFs options, including ETFs that hold commodities (*i.e.,* precious metals) that it currently lists and trades on the Exchange.

The Exchange also proposes a technical amendment to Rule 5020 to amend the names ''ETFS Gold Trust'' to ''abrdn Gold ETF Trust'',[22] ''ETFS Silver trust'' to ''abrdn Silver ETF Trust'',[23] ''ETFS Palladium Trust'' to ''abrdn

Pursuant to Exchange Rule 5050(c), new series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until the close of trading on the business day prior to expiration.

[11] *See* IM–5050–6 Short Term Option Series Program.

[12] *See* IM–5050–13 Monthly Options Series Program.

[13] *See* IM–5050–4 Quarterly Options Series Program.

[14] *See* Rule 5050(d).

[15] *See* IM–5050–1(c).

[16] *See* IM–5050–2 $1 Strike Price Interval Program.

[17] *See* IM–5050–5 $0.50 Strike Program.

[18] *See* IM–5050–3 $2.50 Strike Price Program.

[19] *See* Exchange Rule 7050.

[20] The term ''underlying security'' means the security that the Clearing Corporation shall be obligated to sell (in the case of a call option) or purchase (in the case of a put option contract) upon the valid exercise of an option contract. *See* Exchange Rule 100(a)(72).

[21] The Exchange understands from customers that investors have historically transacted in options on ETFs in the OTC options market if such options were not available for trading in a listed environment.

[22] Effective March 31, 2022, Aberdeen Standard Gold ETF Trust was renamed to abrdn Gold ETF Trust. *https://www.sec.gov/Archives/edgar/data/1450923/000138713122003311/sgol-424b3_030822.htm.*

[23] Effective March 31, 2022, Aberdeen Standard Silver ETF Trust was renamed to abrdn Silver ETF Trust. *https://www.sec.gov/Archives/edgar/data/1450922/000138713122003309/sivr-424b3_030822.htm.*

Palladium ETF Trust'',[24] and ''ETFS Platinum Trust'' to ''abrdn Platinum ETF Trust''.[25] At this time, the Exchange proposes to amend the names of the ETFs to reflect their current names.[26]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[27] in general, and Section 6(b)(5) of the Act,[28] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

In particular, the Exchange believes that the proposal to list and trade options on Bitcoin ETPs will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because offering options on Bitcoin ETPs will provide investors with an opportunity to realize the benefits of utilizing options on a bitcoin-based ETP, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Bitcoin ETP options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of bitcoin and with bitcoin-related products and positions. Additionally, the Exchange's offering of Bitcoin ETP options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. The Exchange also notes that it already lists options on other commodity-based ETFs,[29] which, as described above, are trusts structured in substantially the same manner as Bitcoin ETPs and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (*i.e.,* bitcoin rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed ETFs options it currently lists for trading.

The Exchange also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because it is consistent with current Exchange Rules, previously filed with the Commission. Options on Bitcoin ETPs must satisfy the initial listing standards and continued listing standards currently in the Exchange Rules, applicable to options on all ETFs, including ETFs that hold other commodities already deemed appropriate for options trading on the Exchange. Bitcoin ETP options will trade in the same manner as any other ETFs options—the same Exchange Rules that currently govern the listing and trading of all ETFs options, including permissible expirations, strike prices and minimum increments, and applicable position and exercise limits and margin requirements, will govern the listing and trading of options on Bitcoin ETPs in the same manner.

The Exchange represents that it has the necessary systems capacity to support the new ETF option series. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading ETF options, including Bitcoin ETP options.

Finally, the Exchange's proposal to amend the name ''ETFS Gold Trust'' to ''abrdn Gold ETF Trust'', the name ''ETFS Silver trust'' to ''abrdn Silver ETF Trust'', the name ''ETFS Palladium Trust'' to ''abrdn Palladium ETF Trust'', and the name ''ETFS Platinum Trust'' to ''abrdn Platinum ETF Trust'' in Rule 5020(h) is consistent with the Act and the protection of investors as this amendment reflects the current names of the products.

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to filings submitted by CBOE and MIAX.[30] Additionally, Bitcoin ETP options will be equally available to all market participants who wish to trade such options. The Exchange Rules currently applicable to the listing and trading of options on ETFs on the Exchange will apply in the same manner to the listing and trading of all options on Bitcoin ETPs. Also, and as stated above, the Exchange already lists options on other commodity-based ETFs.[31]

The Exchange does not believe that the proposal to list and trade options on Bitcoin ETPs will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the extent that the advent of Bitcoin ETP options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Bitcoin ETPs. Additionally, the Exchange notes that listing and trading Bitcoin ETP options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading such options in the OTC market. The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition as it is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors by providing them with a lower-cost option to hedge their investment portfolios. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues that offer similar products. Ultimately, the Exchange believes that offering Bitcoin ETP options for trading on the Exchange will promote competition by providing investors with an additional, relatively low cost means to hedge their portfolios

[24] Effective March 31, 2022, Aberdeen Standard Palladium ETF Trust was renamed to abrdn Palladium ETF Trust. *https://www.sec.gov/Archives/edgar/data/1459862/000138713122003305/pall-424b3_030822.htm.*

[25] Effective March 31, 2022, Aberdeen Standard Platinum ETF Trust was renamed to abrdn Platinum ETF Trust. *https://www.sec.gov/Archives/edgar/data/1460235/000138713122003303/pplt-424b3_030822.htm.*

[26] *See* SR–ISE–2024–03, Amendment 1. The Exchange notes that it is not updating corresponding cross-references in Rule 5030(h) to 5020(h) as the formatting of the BOX rules are different from Nasdaq ISE and the Exchange does not believe an update is necessary. Specifically, Nasdaq ISE is updating Option 4 Section 3(h) to remove an incorrect cross reference to a rule that didn't exist.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* Exchange Rule 5020(h).

[30] *See supra,* note 3.

[31] *See* Exchange Rule 5020(h).

and meet their investment needs in connection with bitcoin prices and bitcoin-related products and positions on a listed options exchange.

Further, the Exchange's proposal to amend the names ''ETFS Gold Trust'' to ''abrdn Gold ETF Trust'', ''ETFS Silver trust'' to ''abrdn Silver ETF Trust'', ''ETFS Palladium Trust'' to ''abrdn Palladium ETF Trust'', and ''ETFS Platinum Trust'' to ''abrdn Platinum ETF Trust'' in Rule 5020(h) does not impose an undue burden on competition as this amendment reflects the current names of these products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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–BOX–2024–07 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–BOX–2024–07. 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–BOX–2024–07 and should be submitted on or before April 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06167 Filed 3–22–24; 8:45 am]

BILLING CODE 8011–01–P

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99769; File No. SR–FICC–2024–003]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Adopt a Minimum Margin Amount at GSD

March 19, 2024.

On February 27, 2024, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–FICC–2024–003 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder to modify the FICC's Government Securities Division (''GSD'') Rulebook (''GSD Rules'') to incorporation a Minimum Margin Amount into the GSD margin methodology.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on March 15, 2024.[4] The Commission has received no comments regarding the Proposed Rule Change.

Section 19(b)(2)(i) of the Exchange Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved unless the Commission extends the period within which it must act as provided in section 19(b)(2)(ii) of the Exchange Act.[6] Section 19(b)(2)(ii) of the Exchange Act allows the Commission to designate a longer period for review (up to 90 days from the publication of notice of the filing of a proposed rule change) if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents.[7]

The 45th day after publication of the Notice of Filing is April 29, 2024. In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change and therefore is extending this 45-day time period.

Accordingly, the Commission, pursuant to section 19(b)(2) of the Exchange Act,[8] designates June 13, 2024, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, at 89 FR 18991.

[4] Securities Exchange Act Release No. 99710 (March 11, 2024), 89 FR 18991 (March 15, 2024) (File No. SR–FICC–2024–003) (''Notice of Filing''). FICC also filed a related advance notice (SR–FICC–2024–801) (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Advance Notice was published in the **Federal Register** on March 15, 2024. Securities Exchange Act Release No. 99712 (March 11, 2024), 89 FR (March 15, 2024) (File No. SR–FICC–2024–801).

[5] 15 U.S.C. 78s(b)(2)(i).

[6] 15 U.S.C. 78s(b)(2)(ii).

[7] *Id.*

[8] *Id.*

proposed rule change SR–FICC–2024–003.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06166 Filed 3–22–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99776; File No. SR–ISE–2024–14]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change To Amend ISE Options 4, Section 3 To List and Trade Options on Units That Represent Interests in a Trust That Holds Bitcoin

March 19, 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 March 13, 2024, Nasdaq ISE, LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange to [sic] amend Options 4, Section 3, Criteria for Underlying Securities.

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 Options 4, Section 3, Criteria for Underlying Securities. Specifically, the Exchange proposes to amend Options 4, Section 3(h) to allow the Exchange to list and trade options on units that represent interests in a trust that hold bitcoin (''Bitcoin ETPs''), designating them as Exchange-Traded Fund Shares (''ETFs'') deemed appropriate for options trading on the Exchange. Options 4, Section 3(h) provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include ETFs that represent certain types of interests,[3] including interests in certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).

Bitcoin ETPs are bitcoin-backed commodity ETPs structured as trusts.[4] Similar to any ETF currently deemed appropriate for options trading under Options 4, Section 3(h), the investment objective of a Bitcoin ETP trust is for its shares to reflect the performance of bitcoin (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to bitcoin without the complexities of bitcoin delivery. As is the case for ETFs currently deemed appropriate for options trading, a Bitcoin ETP's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of bitcoin and are designed to track bitcoin or the performance of the price of bitcoin and offer access to the bitcoin market.[5] Bitcoin ETPs provide investors with cost-efficient alternatives that allow a level of participation in the bitcoin market through the securities market. The primary substantive difference between Bitcoin ETPs and ETFs currently deemed appropriate for options trading are that ETFs may hold securities, certain financial instruments, and specified precious metals (which are commodities), while Bitcoin ETPs hold bitcoin (which is also deemed a commodity).

The Exchange's initial listing standards for ETFs on which options may be listed and traded on the Exchange will apply to the Bitcoin ETPs. The Exchange expects Bitcoin ETPs to satisfy the initial listing standards as set forth in Options 4, Section 3(a) and Options 4, Section 3(h). Pursuant to Options 4, Section 3(a), a security (which includes an ETF) on which options may be listed and traded on the Exchange must be a security registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act, and the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded.[6] Options 4, Section 3(h)(1) requires that ETFs must either meet the criteria and guidelines set forth in Options 4, Section 3(a) and (b)[7] or the ETFs are available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer is obligated to issue ETFs in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of the ETFs, all as described in the ETFs' prospectus. The Exchange expects that Bitcoin ETPs would satisfy Options 4, Section 3(h)(1)(ii).[8]

Options on Bitcoin ETPs will also be subject to the Exchange's continued

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options 4, Section 3(h) provides that securities deemed appropriate for options trading shall include shares or other securities (''Exchange-Traded Fund Shares'' or ''ETFs'') that are traded on a national securities exchange and are defined as an ''NMS'' stock under Rule 600 of Regulation NMS, and that meet certain criteria specified in Options 4, Section 3(h), including that they: . . . (iv) represent interests in the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, or the ETFS Gold Trust . . .''. In addition to the aforementioned requirements, Options 4, Section 3(h)(1) and (2) must be met to list options on ETFs.

[4] Pursuant to Options 4, Section 3(a), the Exchange would only have authority to list and trade ETFs that are trading as NMS stocks.

[5] The trust may include minimal cash.

[6] The Exchange represents it would not list options on a Bitcoin ETP unless it satisfied the criteria in Options 4, Section 3(a), the proposed listing criteria, and any other applicable listing criteria.

[7] Options 4, Section 3(h)(1) provides criteria and guidelines when evaluating potential underlying securities for the listing of options.

[8] *See e.g.,* Form S–1 Registration Statement filed on November 29, 2023 (Registration No. 333–275781) (pending registration statement for shares of the Pando Asset Spot Bitcoin Trust); and Form S–1 Registration Statement filed on September 12, 2023 (Registration No. 333–274474) (pending registration statement for shares of the Franklin Bitcoin ETF).

listing standards for options on ETFs set forth in Options 4, Section 4(g) for ETFs deemed appropriate for options trading pursuant to Options 4, Section 3(h). Specifically, options approved for trading pursuant to Options 4, Section 3(h) will not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such ETFs if the ETFs are delisted from trading as provided in subparagraph (b)(5) of Options 4, Section 4 [9] or the ETFs are halted or suspended from trading on their primary market.[10] Additionally, options on ETFs may be subject to the suspension of opening transactions in any series of options of the class covering ETFs in any of the following circumstances:

(1) in the case of options covering Exchange-Traded Fund Shares approved pursuant to Options 4, Section 3(h)(A)(i), in accordance with the terms of subparagraphs (b)(1), (2), (3) and (4) of Options 4, Section 4; [11]

(2) in the case of options covering Fund Shares approved pursuant to Options 4, Section 3(h)(A)(ii),[12] following the initial twelve-month period beginning upon the commencement of trading in the Exchange-Traded Fund Shares on a national securities exchange and are defined as an ''NMS stock'' under Rule 600 of Regulation NMS, there were fewer than 50 record and/or beneficial holders of such Exchange-Traded Fund Shares for 30 or more consecutive trading days;

(3) the value of the index or portfolio of securities or non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities and/or Financial Instruments and Money Market Instruments, on which the Exchange-Traded Fund Shares are based is no longer calculated or available; or

(4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on a Bitcoin ETP would be physically settled contracts with American-style exercise.[13] Consistent with current Options 4, Section 5, which governs the opening of options series on a specific underlying security (including ETFs), the Exchange will open at least one expiration month for options on each Bitcoin ETP [14] and may also list series of options on a Bitcoin ETP for trading on a weekly [15] or quarterly [16] basis. The Exchange may also list long-term equity option series (''LEAPS'') that expire from twelve to thirty-nine months from the time they are listed.[17]

Pursuant to Options 4, Section 5(d), which governs strike prices of series of options on ETFs, the interval between strike prices of series of options on Bitcoin ETPs will be $1 or greater when the strike price is $200 or less and $5 or greater when the strike price is greater than $200.[18] Additionally, the Exchange may list series of options pursuant to the $1 Strike Price Interval Program,[19] the $0.50 Strike Program,[20] the $2.50 Strike Price Program,[21] and the $5 Strike Program.[22] Pursuant to Options 3, Section 3, where the price of a series of a Bitcoin ETP options is less than $3.00, the minimum increment will be $0.05, and where the price is $3.00 or higher, the minimum increment will be $0.10.[23] Any and all new series of Bitcoin ETP options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Options 4, Section 5 and Options 3, Section 3, as applicable.

Bitcoin ETP options will trade in the same manner as options on other ETFs on the Exchange. Exchange Rules that currently apply to the listing and trading of all options on ETFs on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures will apply to the listing and trading of Bitcoin ETPs on the Exchange in the same manner as

[9] Options 4, Section 4(b)(5) provides, if an underlying security is approved for options listing and trading under the provisions of Options 4, Section 3(c), the trading volume of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including 'when-issued' trading, may be taken into account in determining whether the trading volume requirement of (3) of this paragraph (b) is satisfied.

[10] *See* Options 4, Section 4(g).

[11] Options 4, Section 4(b)(5)(1) through (4) provides, if: (1) there are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Act, (2) there are fewer than 1,600 holders of the underlying security, (3) the trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months, or (4) the underlying security ceases to be an 'NMS stock' as defined in Rule 600 of Regulation NMS under the Exchange Act. Options 4, Section 3(h)(i) refers to Financial Instruments and Money Market Instruments. In addition, the Exchange proposes to amend the citation to ''Options 4, Section 3(h)(A)(i)'' herein to ''Options 4, Section 3(h)(i).''

[12] Options 4, Section 3(h)(ii) refers to Currency Trust Shares. In addition, the Exchange proposes to amend the citation to ''Options 4, Section 3(h)(A)(ii)'' herein to ''Options 4, Section 3(h)(ii).''

[13] *See* Options 4, Section 2, Rights and Obligations of Holders and Writers, which provides that the rights and obligations of holders and writers shall be as set forth in the Rules of the Clearing Corporation. *See also* The Options Clearing Corporation (''OCC'') Rules, Chapter VIII, which governs exercise and assignment, and Chapter IX, which governs the discharge of delivery and payment obligations arising out of the exercise of physically settled stock option contracts. OCC Rules can be located at: *https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf.*

[14] *See* Options 4, Section 5(b). At the commencement of trading on the Exchange of a particular class of options, the Exchange will open a minimum of one (1) series of options in that class. The exercise price of that series will be fixed at a price per share, relative to the underlying stock price in the primary market at about the time that class of options is first opened for trading on the Exchange. The monthly expirations are subject to certain listing criteria for underlying securities described within Options 4, Section 5. Monthly listings expire the third Friday of the month. The term ''expiration date'' (unless separately defined elsewhere in the OCC By-Laws), when used in respect of an option contract (subject to certain exceptions), means the third Friday of the expiration month of such option contract, or if such Friday is a day on which the exchange on which such option is listed is not open for business, the preceding day on which such exchange is open for business. *See* OCC By-Laws Article I, Section 1. Pursuant to Options 4, Section 5(c), additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. The opening of a new series of options shall not affect the series of options of the same class previously opened. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until the close of trading on the business day prior to the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the second business day prior to expiration.

[15] *See* Supplementary .03 to Options 4, Section 5.

[16] *See* Supplementary .04 to Options 4, Section 5.

[17] *See* Options 4, Section 8.

[18] *See* Options 4, Section 5(h). The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Quarterly Options Series Program, and the Monthly Options Series Program, Supplementary Material .03, .04 and .08 to Options 4, Section 5 specifically sets forth intervals between strike prices on Short Term Option Series, Quarterly Options Series, and Monthly Options Series, respectively.

[19] *See* Supplementary Material .01 to Options 4, Section 5.

[20] *See* Supplementary Material .05 to Options 4, Section 5.

[21] *See* Supplementary Material .02 to Options 4, Section 5.

[22] *See* Supplementary Material .06 to Options 4, Section 5.

[23] If options on a Bitcoin ETP are eligible to participate in the Penny Interval Program, the minimum increment will be $0.01 for series with a price below $3.00 and $0.05 for series with a price at or above $3.00. *See* Supplementary Material .01 to Options 3, Section 3 (which describes the requirements for the Penny Interval Program).

they apply to other options on all other ETFs that are listed and traded on the Exchange, including the precious-metal backed commodity ETFs already deemed appropriate for options trading on the Exchange pursuant to pursuant to Options 4, Section 3(h)(iv).

Position and exercise limits for options on ETFs, including options on Bitcoin ETPs, are determined pursuant to Options 9, Sections 13 and 15, respectively. Position and exercise limits for ETFs options vary according to the number of outstanding shares and the trading volumes of the underlying ETF over the past six months, where the largest in capitalization and the most frequently traded ETFs have an option position and exercise limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization ETFs have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.[24] Further, Options 6C, Section 3, which governs margin requirements applicable to the trading of all options on the Exchange including options on ETFs, will also apply to the trading of the Bitcoin ETP options.

The Exchange represents that the same surveillance procedures applicable to all other options on other ETFs currently listed and traded on the Exchange will apply to options on Bitcoin ETPs, and that it has the necessary systems capacity to support the new option series. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading options on ETFs, including precious metal-commodity backed ETF options, as proposed. Also, the Exchange may obtain information from CME Group Inc.'s designated contract markets that are members of the Intermarket Surveillance Group related to any financial instrument that is based, in whole or in part, upon an interest in or performance of bitcoin, as applicable.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority or ''OPRA'' have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on Bitcoin ETPs up to the number of expirations currently permissible under the Exchange Rules. Because the proposal is limited to ETFs on a single commodity, the Exchange believes any additional traffic that may be generated from the introduction of Bitcoin ETP options will be manageable.

The Exchange believes that offering options on Bitcoin ETPs will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of bitcoin and hedging vehicle to meet their investment needs in connection with bitcoin-related products and positions. The Exchange expects investors will transact in options on Bitcoin ETPs in the unregulated over-the-counter (''OTC'') options market (if the Commission approves Bitcoin ETPs for exchange-trading),[25] but may prefer to trade such options in a listed environment to receive the benefits of trading listing options, including (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing Bitcoin ETP options may cause investors to bring this liquidity to the Exchange, would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The ETFs that hold financial instruments, money market instruments, or precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as Bitcoin ETPs and essentially offer the same objectives and benefits to investors, just with respect to different assets. The Exchange notes that it has not identified any issues with the continued listing and trading of any ETF options, including ETFS that hold commodities (*i.e.,* precious metals) that it currently lists and trades on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[26] in general, and furthers the objectives of Section 6(b)(5) of the Act,[27] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section (6)(b)(5)[28] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposal to list and trade options on Bitcoin ETPs will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because offering options on Bitcoin ETPs will provide investors with a greater opportunity to realize the benefits of utilizing options on a bitcoin-based ETP, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Bitcoin ETP options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of bitcoin and with bitcoin-related products and positions. Additionally, the Exchange's offering of Bitcoin ETP options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. The Exchange also notes that it already lists options on other commodity-based ETFs,[29] which, as described above, are trusts structured in substantially the same manner as Bitcoin ETPs and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (*i.e.,* bitcoin rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed ETF options it currently lists for trading.

The Exchange also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because

[24] As Bitcoin ETPs do not currently trade, options on Bitcoin ETPs would be subject to the 25,000 option contract limit.

[25] The Exchange understands from customers that investors have historically transacted in options on units in the OTC options market if such options were not available for trading in a listed environment.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78(f)(b)(5).

[29] *See* Options 4, Section 3(h)(iv).

it is consistent with current Exchange Rules, previously filed with the Commission. Options on Bitcoin ETPs must satisfy the initial listing standards and continued listing standards currently in the Exchange Rules, applicable to options on all ETFs, including ETFs that hold other commodities already deemed appropriate for options trading on the Exchange. Bitcoin ETP options will trade in the same manner as any other ETF options—the same Exchange Rules that currently govern the listing and trading of all ETF options, including permissible expirations, strike prices and minimum increments, and applicable position and exercise limits and margin requirements, will govern the listing and trading of options on Bitcoin ETPs in the same manner.

The Exchange represents that it has the necessary systems capacity to support the new ETF option series. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading ETF options, including Bitcoin ETP options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as Bitcoin ETPs would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other ETF before the Exchange could list options on them. Additionally, Bitcoin ETP options will be equally available to all market participants who wish to trade such options. The Exchange Rules currently applicable to the listing and trading of options on ETFs on the Exchange will apply in the same manner to the listing and trading of all options on Bitcoin ETPs. Also, and as stated above, the Exchange already lists options on other commodity-based ETFs.[30]

The Exchange does not believe that the proposal to list and trade options on Bitcoin ETPs will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the extent that the advent of Bitcoin ETP options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Bitcoin ETPs. Additionally, the Exchange notes that listing and trading Bitcoin ETP options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading such options in the OTC market. The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition as it is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors by providing them with a lower-cost option to hedge their investment portfolios. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues that offer similar products. Ultimately, the Exchange believes that offering Bitcoin ETP options for trading on the Exchange will promote competition by providing investors with an additional, relatively low-cost means to hedge their portfolios and meet their investment needs in connection with bitcoin prices and bitcoin-related products and positions on a listed options exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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–2024–14 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–2024–14. 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–2024–14 and should be submitted on or before April 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06165 Filed 3–22–24; 8:45 am]

BILLING CODE 8011–01–P

[30] *See* Options 4, Section 3(h)(iv).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99765; File No. SR–CboeEDGA–2024–003]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 11.6(n)(4) and Rule 11.10(a)(4)(D) To Permit the Use of the Post Only Order Instruction at Prices Below $1.00

March 19, 2024.

On January 19, 2024, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 11.6(n)(4) and Rule 11.10(a)(4)(D) to permit the use of the Post Only order instruction at prices below $1.00. The proposed rule change was published for comment in the **Federal Register** on February 7, 2024.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 23, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change, so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates May 7, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–CboeEDGA–2024–003).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06162 Filed 3–22–24; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99458 (February 1, 2024), 89 FR 8460 (February 7, 2024) (SR–CboeEDGA–2024–003).

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99772; File No. SR–CboeBZX–2023–070]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No.1 to, and Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove, a Proposed Rule Change to List and Trade Shares of the ARK 21Shares Ethereum ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

March 19, 2024.

On September 6, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the ARK 21Shares Ethereum ETF (''Trust'') under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on September 27, 2023.[3]

On September 27, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 18, 2023, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On February 14, 2024, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 amended and replaced in its entirety the proposed rule change as originally submitted. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to extend the time period for approving or disapproving the proposed rule change, as modified by Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to list and trade shares of the ARK 21Shares Ethereum ETF (the ''Trust''),[8] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set 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

This Amendment No. 1 to SR–CboeBZX–2023–070 amends and replaces in its entirety the proposal as originally submitted on September 6, 2023. The Exchange submits this

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98467 (Sept. 21, 2023), 88 FR 66515 (''Notice''). Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebzx-2023-070/srcboebzx2023070.htm*.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 98565, 88 FR 68187 (Oct. 3, 2023).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 99196, 88 FR 88685 (Dec. 22, 2023).

[8] The Trust was formed as a Delaware statutory trust on September 5, 2023, and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[9] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[10] 21Shares US LLC is the sponsor of the Trust (the ''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[11] According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[12] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[13] With this in mind, the CME Ether Futures market, which launched in February 2021, is the proper market to consider in determining whether there is a related regulated market of significant size.

Recently, the Commission issued an order granting approval for proposals to list bitcoin-based commodity trust and bitcoin-based trust issued receipts (these proposed funds are nearly identical to the Trust, but proposed to hold bitcoin instead of ETH) (''Spot Bitcoin ETPs'').[14] By way of background, in 2022 the Commission disapproved proposals[15] to list Spot Bitcoin ETPs, including the Grayscale Order.[16] Grayscale appealed the decision with the U.S. Court of Appeals for the D.C. Circuit, which held that the Commission had failed to adequately explain its reasoning that the proposing exchange had not established that the CME bitcoin futures market was a market of significant size related to spot bitcoin, or that the ''other means'' asserted were sufficient to satisfy the statutory standard. As a result, the court vacated the Grayscale Order and remanded the matter to the Commission.[17] In considering the remand of the Grayscale Order and the Spot Bitcoin ETPs, the Commission determined in the Spot Bitcoin ETP Approval Order that the CME Bitcoin Futures market is a regulated market of significant size. Specifically, the Commission stated:

> [B]ased on the record before the Commission and the improved quality of the correlation analysis in the record . . . the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME–a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of ''significant size'' related to spot bitcoin–can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.[18]

As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Ether Futures market represents a regulated market of significant size as it relates to the CME Ether Futures market and that this proposal should be approved.

Background

Ethereum (also referred to as ''ETH'' or ''ether'') is a decentralized smart contract platform that revolutionized the world of blockchain technology beyond its initial use case of peer-to-peer payments. It introduced the idea of ''smart contracts,'' self-executing agreements with predefined rules, enabling developers and entrepreneurs worldwide to code and deploy decentralized applications on top of the Ethereum network. Ether (ETH), the native crypto asset of the network, is the fuel that allows Ethereum to operate in the same way that we use oil to propel vehicles, heat buildings, and produce electricity in the physical world. Users must pay a ''gas fee'' or a transaction tax in ether for every transaction they perform on the network. The term ''gas'' refers to the unit that measures the computational effort required to execute specific operations on the Ethereum blockchain. Thus, ether is analogous to a digital commodity powering the

[9] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[10] Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, ''Continued Listing Representations'') shall constitute continued listing requirements for the Shares listed on the Exchange.

[11] *See* the Registration Statement on Form S–1, dated September 6, 2023, submitted by the Sponsor on behalf of the Trust. The descriptions of the Trust, the Shares, and the Index (as defined below) contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective, and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[12] 15 U.S.C. 80a–1.

[13] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order''). Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market. Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the approval order issued related to the first spot gold ETP ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' *See* Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act.

[14] *See* Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the ''Spot Bitcoin ETP Approval Order'').

[15] *See* Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 97102 (Mar. 10, 2023), 88 FR 16055 (Mar. 15, 2023) (SR-CboeBZX–2022–035) (''VanEck Order II'') and n.11 therein for the complete list of previous proposals.

[16] *See* Securities Exchange Act Release No. 95180 (June 29, 2022) 87 FR 40299 (July 6, 2022) (SR–NYSEArca–2021–90) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of Grayscale Bitcoin Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) (the ''Grayscale Order'').

[17] *See* Grayscale Investments, LLC v. SEC, 82 F.4th 1239 (D.C. Cir. 2023).

[18] *See* the Spot Bitcoin ETP Approval Order at 3011–3012.

Ethereum network. For instance, an entire virtual economy has emerged with ether as the unit of account and medium of exchange. This phenomenon is similar to the spontaneous adoption of commodities like coffee and, most notably, precious metals like gold as money by various civilizations throughout history, except this time, in a digital-native realm.

With more than 5,946 monthly active developers as of June 2023, Ethereum is the world's largest developer ecosystem. Moreover, the platform is explored and experimented with by various private banks and central banks globally. Since its launch in 2015, Ethereum has driven the evolution of the blockchain space with innovations, ranging from decentralized finance (DeFi), non-fungible tokens (NFTs), digital identity solutions, and the tokenizations of off-chain, or as it's commonly referred to, ''real-world'' assets. Some of the most important innovations that have come out of DeFi include 'stablecoins,' decentralized exchanges (DEXs), and automated lending protocols. Stablecoins maintain price parity with a target asset, such as the U.S. dollar. Decentralized exchanges (DEXs), such as Uniswap, allow users to trade assets without the need for an intermediary against an ''automated market-maker'' (AMM), settling trillions of dollars of value since their inception. As a final example, overcollateralized lending protocols like MakerDAO, Aave, or Compound have taken traditional credit risk out of the equation, relying instead on smart contract automation and operators to liquidate loans when the collateralization ratio falls below a predetermined threshold. These and many other DeFi innovations reveal one of the core value propositions of Ethereum—the ability to act as a credibly neutral settlement layer where developers can automate away the need for centralized intermediaries.

Much like bitcoin, access for U.S. retail investors to gain exposure to ether via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead, current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot ether; or (ii) over-the-counter ether funds (''OTC Ether Funds'') with high management fees and potentially volatile premiums and discounts. Meanwhile, investors in other countries are able to use more traditional exchange listed and traded products (including exchange-traded funds holding physical ETH) to gain exposure to ether. Similarly, investors across Europe have access to products which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting ether exposure.

To this point, the lack of an ETP that holds spot ETH (a ''Spot Ether ETP'') exposes U.S. investor assets to significant risk because investors that would otherwise seek cryptoasset exposure through a Spot Ether ETP are forced to find alternative exposure through fewer and more risky means. For example, investors in OTC Ether Funds are not afforded the benefits and protections of regulated Spot Ether ETPs, resulting in retail investors suffering losses due to drastic movements in the premium/discount of OTC Ether Funds. Many retail investors likely suffered losses due to this premium/discount in OTC Ether Fund trading; all such losses could have been avoided if a Spot Ether ETP had been available. Additionally, many U.S. investors that held their digital assets in accounts at FTX,[19] Celsius Network LLC,[20] BlockFi Inc.[21] and Voyager Digital Holdings, Inc.[22] have become unsecured creditors in the insolvencies of those entities. If a Spot Ether ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot Ether ETP. To this point, approval of a Spot Ether ETP would represent a major win for the protection of U.S. investors in the cryptoasset space. The Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including ether, on centralized platforms.

Ether Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act'') that provide exposure to ether primarily through CME Ether Futures (''Ether Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on ether.

The structure of Ether Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Ether ETP. Specifically, the cost of rolling CME Ether Futures contracts will cause the Ether Futures ETFs to lag the performance of ether itself and, at over a billion dollars in assets under management, would cost U.S. investors significant amounts of money on an annual basis compared to Spot Ether ETPs. Such rolling costs would not be required for Spot Ether ETPs that hold ether. Further, Ether Futures ETFs could potentially hit CME position limits, which would force an Ether Futures ETF to invest in non-futures assets for ether exposure and cause potential investor confusion and lack of certainty about what such Ether Futures ETFs are actually holding to try to get exposure to ether, not to mention completely changing the risk profile associated with such an ETF. While Ether Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to ether that will unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Ether ETPs and the Exchange believes that any proposal to list and trade a Spot Ether ETP should be reviewed by the Commission with this important investor protection context in mind.

To the extent the Commission may view differential treatment of Ether Futures ETFs and Spot Ether ETPs as warranted based on the Commission's concerns about the custody of physical ether that a Spot Ether ETP would hold (compared to cash-settled futures contracts),[23] the Sponsor believes this concern is mitigated to a significant degree by the custodial arrangements that the Trust has contracted with the Custodian to provide, as further outlined below. In the Custody Statement, the Commission stated that the fourth step that a broker-dealer could take to shield traditional securities customers and others from the risks and consequences of digital asset security fraud, theft, or loss is to establish, maintain, and enforce reasonably designed written policies, procedures, and controls for safekeeping and demonstrating the broker-dealer has exclusive possession or control over digital asset securities that are

[19] *See* FTX Trading Ltd., et al., Case No. 22–11068.

[20] *See* Celsius Network LLC, et al., Case No. 22–10964.

[21] *See* BlockFi Inc., Case No. 22–19361.

[22] *See* Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

[23] See, *e.g.,* Division of Investment Management Staff, Staff Statement on Funds Registered Under the Investment Company Act Investing in the Bitcoin Futures Market, May 11, 2021 (''The Bitcoin Futures market also has not presented the custody challenges associated with some cryptocurrency-based investing because the futures are cash-settled'').

consistent with industry best practices to protect against the theft, loss, and unauthorized and accidental use of the private keys necessary to access and transfer the digital asset securities the broker-dealer holds in custody. While ether is not a security and the Custodian is not a broker-dealer, the Sponsor believes that similar considerations apply to the Custodian's holding of the Trust's ether. After diligent investigation, the Sponsor believes that the Custodian's policies, procedures, and controls for safekeeping, exclusively possessing, and controlling the Trust's ether holdings are consistent with industry best practices to protect against the theft, loss, and unauthorized and accidental use of the private keys. As a trust company chartered by the NYDFS, the Sponsor notes that the Custodian is subject to extensive regulation and has among longest track records in the industry of providing custodial services for digital asset private keys. Under the circumstances, therefore, to the extent the Commission believes that its concerns about the risks of spot ether custody justifies differential treatment of a Ether Futures ETF versus a Spot Ether ETP, the Sponsor believes that the fact that the Custodian employs the same types of policies, procedures, and safeguards in handling spot ether that the Commission has stated that broker-dealers should implement with respect to digital asset securities would appear to weaken the justification for treating a Ether Futures ETF compared to a Spot Ether ETP differently due to spot ether custody concerns.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Ether ETPs compared to the Ether Futures ETFs would lead to the conclusion that Spot Ether ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Ether ETPs should be approved by the Commission. Stated simply, U.S. investors would benefit immensely from holding Spot Ether ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Ether ETPs would apply equally to the spot markets underlying the futures contracts held by an Ether Futures ETF. Both the Exchange and Sponsor believe that the CME Ether Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing the listing and trading of Ether Futures ETFs that hold primarily CME Ether Futures, however, the only consistent outcome would be approving Spot Ether ETPs on the basis that the CME Ether Futures market is a regulated market of significant size.

Given the current landscape, approving this proposal (and others like it) and allowing Spot Ether ETPs to be listed and traded alongside Ether Futures ETFs and Spot Bitcoin ETPs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for ether exposure, and offer flexibility in the means of gaining exposure to ether through transparent, regulated, U.S. exchange-listed vehicles.

CME Ether Futures [24]

CME began offering trading in ether futures (''CME Ether Futures'') in February 2021. Each contract represents 50 ether and is based on the CME CF Ether-Dollar Reference Rate.[25] The contracts trade and settle like other cash-settled commodity futures contracts. Most measurable metrics related to CME Ether Futures have generally trended up since launch, although some metrics have slowed recently. For example, there were 138,692 CME ETH Futures contracts traded in January 2024 (approximately $16.7 billion) compared to 99,496 ($14.6 billion) and 96,621 ($7.1 billion) contracts traded in January 2022, and January 2023 respectively.[26]

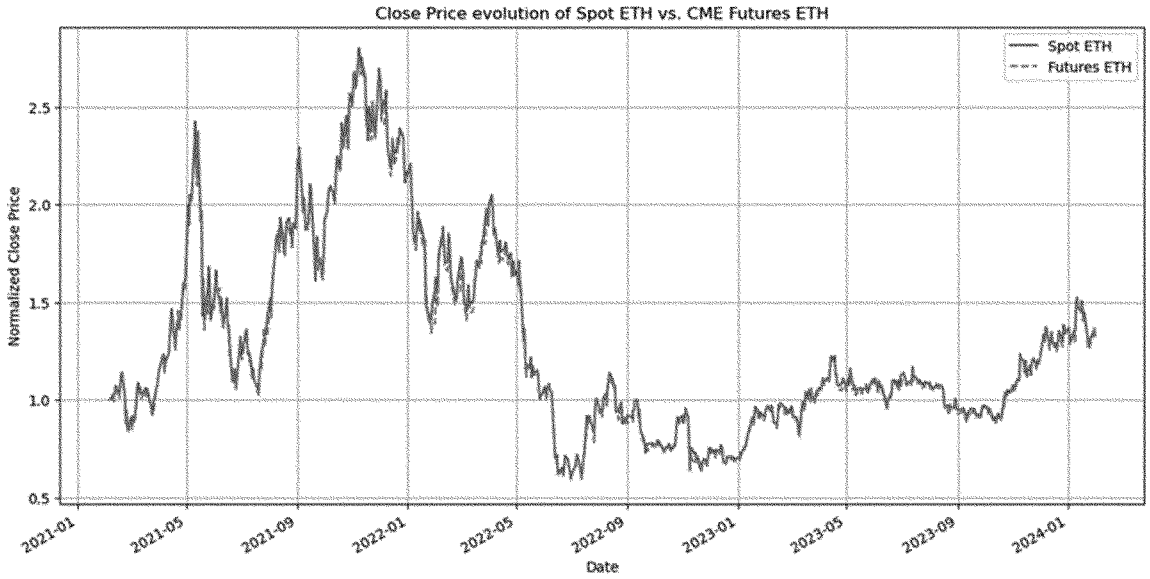
In addition, according to Sponsor's research, trading volume for CME Ether Futures amounts to a total volume of $16,655,693,654 for January 2024, up from $6,123,830,768.67 for August 2023. This January 2024 trading volume represents 125,356 in open interest for CME Ether Futures, with an average value of $309,838,188.62, compared to 3,646.26 in open interest for CME Ether Futures, with an average value of $319,051,613.52 for August 2023. For January 2024, there were a total of 138,692 contracts for CME Ether Futures (equivalent to 6,934,600 ETH), compared to a total of 72,223 contracts for CME Ether Futures (equivalent to 3,611,150 ETH) in August 2023.

Sponsor's analyses further demonstrate that the correlation in pricing between CME Ether Futures and Spot ETH is significantly correlated. Notably, the Sponsor performed a pairwise correlation of ether daily returns across top centralized spot cryptocurrency trading platforms and the CME from January 1, 2022 to February 1, 2024. The Sponsor's research indicates that daily correlation between the Spot ETH and the CME ETH Futures during this time period was over 99.89%.

[24] Unless otherwise noted, all data and analysis presented in this section and referenced elsewhere in the filing has been provided by the Sponsor.

[25] The CME CF Ether-Dollar Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto exchanges and trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

[26] Source: CME, February 2024.



Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[27] including Commodity-Based Trust Shares,[28] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [29] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Ether Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [30] with a regulated market of significant size. Both the Exchange and CME are members of ISG. The only remaining issue to be addressed is whether the ether futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[31]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the

[27] *See* Exchange Rule 14.11(f).

[28] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[29] Much like bitcoin, the Exchange believes that ether is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of ether trading render it difficult and prohibitively costly to manipulate the price of ETH. The fragmentation across ether platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ether prices through continuous trading activity challenging. To the extent that there are ether exchangestrading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of ether on other markets, such pricing does not normally impact prices on other exchangetrading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the ether markets and the presence of arbitrageurs in those markets means that the manipulation of the price of ether price on any single venue would require manipulation of the global ether price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular ether exchangetrading platforms or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[30] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance- sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the ISG constitutes such a surveillance sharing agreement. *See* Wilshire Phoenix Disapproval.

[31] *See* Wilshire Phoenix Disapproval.

requisite surveillance-sharing agreement.[32] [33]

(a) Manipulation of the ETP

The significant market test requires that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct. In light of the similarly high correlation between spot ETH/CME Ether Futures and spot bitcoin/CME Bitcoin Futures, applying the same rationale that the Commission applied to a Spot Bitcoin ETP in the Spot Bitcoin ETP Approval Order [34] also indicates that this test is satisfied for this proposal. As noted above, in the Spot Bitcoin ETP Approval Order, the SEC concluded that:

. . . fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME . . . can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.[35]

The assumptions from this statement are also true for CME Ether Futures. CME Ether Futures pricing is based on pricing from spot ether markets. The statement from the Spot Bitcoin ETP Approval Order that the surveillance-sharing agreement with the CME ''can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This same logic would extend to CME Ether Futures markets where CME's surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME Ether Futures.

(b) Predominant Influence on Prices in Spot and Ether Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the CME Ether Futures market for a number of reasons. First, because the Trust would not hold CME Ether Futures contracts, the only way that it could be the predominant force on prices in that market is through the spot markets that CME Ether Futures contracts use for pricing.[36] The Sponsor notes that ether total 24-hour spot trading volume has averaged $15.82 billion over the year ending February 1, 2024.[37] The Sponsor expects that the Trust would represent a very small percentage of this daily trading volume in the spot ether market even in its most aggressive projections for the Trust's assets and, thus, the Trust would not have an impact on the spot market and therefore could not be the predominant force on prices in the CME Ether Futures market. Second, much like the CME Bitcoin Futures market, the CME Ether Futures market has progressed and matured significantly. As the court found in the Grayscale Order, ''Because the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.'' The Exchange and sponsor agree with this sentiment and believe it applies equally to the spot ether and CME Ether Futures markets.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to ether through OTC Ether Funds has grown into the tens of billions of dollars and more than a billion dollars of exposure through Ether Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Ether Futures ETFs and premium/discount volatility and management fees for OTC Ether Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, also believes that such concerns are now outweighed by these investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to ether in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Ether Futures ETFs and operating companies that are imperfect proxies for ether exposure; and (iv) providing an alternative to custodying spot ether.

ARK 21Shares Ethereum Trust

Delaware Trust Company is the trustee (''Trustee''). The Bank of New York Mellon will be the administrator (''Administrator'') and transfer agent (''Transfer Agent''). Foreside Global Services, LLC will be the marketing agent (''Marketing Agent'') in connection with the creation and redemption of ''Baskets'' of Shares. ARK Investment Management LLC (the ''Subadvisor'') is the sub-adviser of the Trust and will provide data, research, and as needed, operational support to the Trust including with respect to assistance in the marketing of the Shares. As noted above, Coinbase Custody Trust Company, LLC, a third-party regulated custodian (the ''Custodian''), will be responsible for custody of the Trust's ether. The Bank of New York Mellon (the ''Cash Custodian'') will act as custodian of the Trust's cash and cash equivalents.

[32] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[33] According to reports, the Commission is poised to allow the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act''), that provide exposure to ether primarily through CME Ether Futures (''ETH Futures ETFs'') as early as October 2023. Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on ETH. *https://www.bloomberg.com/news/articles/2023-08-17/sec-said-to-be-poised-to-allow-us-debut-of-ether-futures-etfs-eth#xj4y7vzkg.*

[34] *See* Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the ''Spot Bitcoin ETP Approval Order'').

[35] *See* the Spot Bitcoin ETP Approval Order at 3011–3012.

[36] This logic is reflected by the court in the Grayscale Order at 17–18. Specifically, the court found that ''Because Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market . . . But Grayscale holds just 3.4 percent of outstanding bitcoin, and the Commission did not suggest Grayscale can dominate the price of bitcoin.''

[37] Source: CryptoCompare.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust. The Trust's assets will only consist of ether, cash, or cash and cash equivalents.[38]

According to the Registration Statement, the Trust will be neither an investment company registered under the Investment Company Act of 1940, as amended,[39] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust creates or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares (a ''Creation Basket'') at the Trust's net asset value (''NAV''). Authorized participants will deliver, or facilitate the delivery of, cash to the Trust's account with the Cash Custodian in exchange for Shares when they create Shares, and the Trust, through the Custodian, will deliver cash to such authorized participants when they redeem Shares with the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction.

As noted above, the Trust is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding ether on centralized platforms. Specifically, the Trust is designed to protect investors as follows:

(i) Assets of the Trust Protected From Insolvency

The Trust's ether will be held by its Custodian,[40] which is a New York chartered trust company overseen by the NYDFS and a qualified custodian under Rule 206–4 of the Investment Adviser Act. The Custodian will custody the Trust's ether pursuant to a custody agreement, which requires the Custodian to maintain the Trust's ether in segregated accounts that clearly identify the Trust as owner of the accounts and assets held on those accounts; the segregation will be both from the proprietary property of the Custodian and the assets of any other customer. Such an arrangement is generally deemed to be ''bankruptcy remote,'' that is, in the event of an insolvency of the Custodian, assets held in such segregated accounts would not become property of the Custodian's estate and would not be available to satisfy claims of creditors of the Custodian. In addition, according to the Registration Statement, the Custodian carries fidelity insurance, which covers assets held by the Custodian in custody from risks such as theft of funds. These arrangements provide significant protections to investors and could have mitigated the type of losses incurred by investors in the numerous crypto-related insolvencies, including Celsius, Voyager, BlockFi and FTX.

(ii) Trust's Transfer Agent Will Instruct Disposition of Trust's Ether

According to the Registration Statement, except with respect to sale of ether from time to time to cover expenses of the Trust, the only time ether will move into or out from the Trust will be with respect to creations or redemptions of Shares of the Trust. In such cases, a third party will use cash to buy and deliver ether to create Shares or withdraw and sell ether for cash to redeem Shares, on behalf of the Trust. Authorized Participants will deliver cash to the Trust's account with the Cash Custodian in exchange for Shares of the Trust, and the Trust, through the Cash Custodian, will deliver cash to authorized participants when those authorized participants redeem Shares of the Trust. The Transfer Agent will facilitate the settlement of Shares in response to the placement of creation orders and redemption orders from authorized participants. The creation and redemption procedures are administered by the Transfer Agent, an independent third party. Specifically, Shares are issued in registered form in accordance with the Trust agreement.[41] The Transfer Agent has been appointed registrar and transfer agent for the purpose of transferring Shares in certificated form. The Transfer Agent keeps a record of all shareholders and holder of the Shares in certified form in the registry. The Sponsor recognizes transfers of Shares in certified form only if done in accordance with the Trust agreement. In other words, according to the Registration Statement, with very limited exceptions, the Sponsor will not give instructions with respect to the transfer or disposition of the Trust's ether. Ether owned by the Trust will at all times be held by, and in the control of, the Custodian, and transfer of such ether to or from the Custodian will occur only in connection with creation and redemptions of Shares. This will provide safeguards against the movement of ether owned by the Trust by or to the Sponsor or affiliates of the Sponsor.

(iii) Trust's Assets Are Subject to Regular Audit

According to the Registration Statement, audit trails exist for all movement of ether within Custodian-controlled ether wallets and are audited annually for accuracy and completeness by an independent external audit firm. In addition, the Trust will be audited by an independent registered public accounting firm on a regular basis.

(iv) Trust Is Subject to the Exchange's Obligations of Companies Listed on the Exchange and Applicable Corporate Governance Requirements

The Trust will be subject to the obligations of companies listed on the Exchange set forth in BZX Rule 14.6, which require the listed companies to make public disclosure of material events and any notifications of deficiency by the Exchange, file and distribute period financial reports, engage independent public accountants registered with the Exchange, among other things. Such disclosures serve a key investor protection role. In addition, the Trust will be subject to the corporate governance requirements for companies listed on the Exchange set forth in BZX Rule 14.10.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust will be to seek to track the performance of ether, as measured by the performance of the CME CF Ether-Dollar Reference Rate—New York Variant (the ''Index''), adjusted for the Trust's expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold ether and will value the Shares daily based on the Index. The Trust will process all creations and redemptions in cash transactions with authorized participants. The Trust is not actively managed.

The Index

The Fund will use the Index to calculate the Trust's NAV. The Trust will determine the ether Index price and value its shares daily based on the value of ether as reflected by the Index. The Index is calculated daily and aggregates the notional value of ether trading across major ether spot trading platforms. The Index currently uses substantially the same methodology as

[38] Cash equivalents are short-term instruments with maturities of less than 3 months.

[39] 15 U.S.C. 80a–1.

[40] According to the Registration Statement, the Trust's cash will be held at The Bank of New York Mellon pursuant to a cash custody agreement.

[41] The Trust agreement refers to the ''Amended and Restated Trust Agreement of Ark 21Shares Ethereum ETF.''

the CME CF Ether Dollar Reference Rate (''ERR''), including utilizing the same six ether trading platforms, which is the underlying rate to determine settlement of CME Ether Futures contracts, except that the Index is calculated as of 4:00 p.m. ET, whereas the ERR is calculated as of 4:00 p.m. London time. The administrator of the Index is CF Benchmarks Ltd. (the ''Index Provider'').

The Index, which was introduced on November 14, 2016, is based on materially the same methodology (except calculation time) as the Index Provider's ERR, which was first introduced on May 14, 2018, and is the rate on which ether futures contracts are cash-settled in U.S. dollars at the CME. The Index is designed based on the IOSCO Principals for Financial Benchmarks. The administrator of the Index is the Index Provider. The Index is calculated daily and aggregates the notional value of ether trading activity across major ether spot trading platforms.

The Sponsor believes that the use of the Index is reflective of a reasonable valuation of the average spot price of ether and that resistance to manipulation is a priority aim of its design methodology. The methodology: (i) takes an observation period and divides it into equal partitions of time; (ii) then calculates the volume-weighted median of all transactions within each partition; and (iii) the value is determined from the arithmetic mean of the volume-weighted medians, equally weighted. By employing the foregoing steps, the Index thereby seeks to ensure that transactions in ether conducted at outlying prices do not have an undue effect on the value of a specific partition, large trades or clusters of trades transacted over a short period of time will not have an undue influence on the index level, and the effect of large trades at prices that deviate from the prevailing price are mitigated from having an undue influence on the benchmark level.

In addition, the Sponsor notes that an oversight function is implemented by the Index Provider in seeking to ensure that the Index is administered through codified policies for Index integrity. The Trust will determine the value its Shares daily based on the value of ether as reflected by the Index. The Index is calculated daily and aggregates the notional value of ether trading activity across major ether spot trading platforms. The Index is designed based on the IOSCO Principals for Financial Benchmarks. The Trust also uses the ether price determined by the Index to calculate its ''Ether Holdings,'' which is the aggregate U.S. Dollar value of ether in the Trust, based on the ether price determined by the Index, less its liabilities and expenses. ''Ether Holdings per Share'' is calculated by dividing Ether Holdings by the number of Shares currently outstanding. Ether Holdings and Ether Holdings per Share are not measures calculated in accordance with GAAP. Ether Holdings is not intended to be a substitute for the Trust's NAV calculated in accordance with GAAP, and Ether Holdings per Share is not intended to be a substitute for the Trust's NAV per Share calculated in accordance with GAAP.

The Index was created to facilitate financial products based on ether. It serves as a once-a-day benchmark rate of the U.S. dollar price of ether (USD/ETH), calculated as of 4:00 p.m. ET. The Index aggregates the trade flow of several ether trading platforms, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one ether at 4:00 p.m. ET. Specifically, the Index is calculated based on the ''Relevant Transactions'' (as defined below) of all of its constituent ether trading platforms, which are currently Coinbase, Bitstamp, Kraken, itBit, LMAX Digital and Gemini (the ''Constituent Platforms''), as follows:

- All Relevant Transactions are added to a joint list, recording the time of execution, trade price and size for each transaction.
- The list is partitioned by timestamp into 12 equally sized time intervals of five-minute length.
- For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions, *i.e.,* across all Constituent Platforms. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.
- The Index is then determined by the equally weighted average of the volume medians of all partitions.

The Index does not include any futures prices in its methodology. A ''Relevant Transaction'' is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. Eastern time on a Constituent Platform in the ETH/USD pair that is reported and disseminated by a Constituent Platform through its publicly available API and observed by the Index Provider. An oversight function is implemented by the Index Provider in seeking to ensure that the Index is administered through the Index Provider's codified policies for Index integrity.

The Sponsor believes that the use of the Index is reflective of a reasonable valuation of the average spot price of ether and that resistance to manipulation is a priority aim of its design methodology. The methodology: (i) takes an observation period and divides it into equal partitions of time; (ii) then calculates the volume-weighted median of all transactions within each partition; and (iii) the value is determined from the arithmetic mean of the volume-weighted medians, equally weighted. By employing the foregoing steps, the Index thereby seeks to ensure that transactions in ether conducted at outlying prices do not have an undue effect on the value of a specific partition, large trades or clusters of trades transacted over a short period of time will not have an undue influence on the index level, and the effect of large trades at prices that deviate from the prevailing price are mitigated from having an undue influence on the benchmark level.

Index data and the description of the Index are based on information made publicly available by the Index Provider on its website at *https://www.cfbenchmarks.com.*

Net Asset Value

NAV means the total assets of the Trust (which includes all ether and cash and cash equivalents) less total liabilities of the Trust. The Administrator determines the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. EST. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Administrator values the ether held by the Trust based on the price set by the Index as of 4:00 p.m. EST. The Administrator also determines the NAV per Share.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.

If the Index is not available, or if the Sponsor determines in good faith that the Index does not reflect an accurate ether price, then the Administrator will employ an alternative method to determine the fair value of the Trust's assets.[42]

[42] Such alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b–4.

Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's ether holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price [43] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business and available on the Sponsor's website at *www.21shares.com,* or any successor thereto.

The Intraday Indicative Value (''IIV'') will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's ether during the trading day. The IIV disseminated during Regular Trading Hours to reflect changes in the value of the Trust's ether holdings during the trading day. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV may differ from the NAV due to the differences in the time window of trades used to calculate each price (the NAV uses the Index price as of 4 p.m. ET, whereas the IIV draws prices from the last trade on each Constituent Platform in an effort to produce a relevant, real-time price). The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services.

The price of ether will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is calculated daily and aggregates the notional value of ether trading activity across major ether spot trading platforms. Index data, value, and the description of the Index are based on information made publicly available by the Index Provider on its website at *https://www.cfbenchmarks.com.*

Quotation and last sale information for ether is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in ether is available from major market data vendors and from the trading platforms on which ether are traded. Depth of book information is also available from ether trading platforms. The normal trading hours for ether trading platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The Ether Custodian

The Custodian carefully considers the design of the physical, operational, and cryptographic systems for secure storage of the Trust's private keys in an effort to lower the risk of loss or theft. The Custodian utilizes a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the Trust maintains exclusive ownership of its assets. The operational procedures of the Custodian are reviewed by third-party advisors with specific expertise in physical security. The devices that store the keys will never be connected to the internet or any other public or private distributed network—this is colloquially known as ''cold storage.'' Only specific individuals are authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Sponsor or the investment professionals managing the Trust, acting alone or together, will be able to access or use any of the private keys that hold the Trust's ether.

Creation and Redemption of Shares

When the Trust creates or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares that are based on the quantity of ether attributable to each Share of the Trust (*e.g.,* a Creation Basket) at the Trust's NAV. The authorized participants will deliver only cash to create shares and will receive only cash when redeeming shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive ether as part of the creation or redemption process or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving ether as part of the creation or redemption process. The Trust will create shares by receiving ether from a third party that is not the authorized participant and the Trust—not the authorized participant—is responsible for selecting the third party to deliver the ether. Further, the third party will not be acting as an agent of the authorized participant with respect to the delivery of the ether to the Trust or acting at the direction of the authorized participant with respect to the delivery of the ether to the Trust. The Trust will redeem shares by delivering ether to a third party that is not the authorized participant and the Trust—not the authorized participant—is responsible for selecting the third party to receive the ether. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the ether from the Trust or acting at the direction of the authorized participant with respect to the receipt of the ether from the Trust.

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Basket. Purchase orders must be placed by 12:00 p.m. Eastern Time, the close of regular trading on the Exchange, or another time determined by the Sponsor. The day on which an order is received is considered the purchase order date. The total deposit of ether required is an amount of ether that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. Each night, the Sponsor will publish the amount of ether that will be required in exchange for each creation order. The Administrator determines the required deposit for a given day by dividing the number of ether held by the

[43] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

Trust as of the opening of business on that business day, adjusted for the amount of ether constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the number of Shares in a Creation Unit.

The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets. A third party, that is unaffiliated with the Trust and the Sponsor, will use cash to buy and deliver ether to create Shares or withdraw and sell ether for cash to redeem Shares, on behalf of the Trust.

The Sponsor will maintain ownership and control of ether in a manner consistent with good delivery requirements for spot commodity transactions.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Trust must be in compliance with Rule 10A–3 under the Act. A minimum of 10,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and information about the NAV and the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds (1) a specified commodity [44] deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying ether, Ether Futures contracts, options on Ether Futures, or any other ether derivative through members acting as registered Market Makers, in connection with their proprietary or customer trades.

As a general matter, the Exchange has regulatory jurisdiction over its Members and their associated persons, which include any person or entity controlling a Member. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of a Member that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the ether underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

If the IIV or the value of the Index is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the value of the Index occurs. If the interruption to the dissemination of the IIV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

[44] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that bitcoin is a commodity as defined in Section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share. The Shares of the Trust will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Ether Futures with other markets and other entities that are members of the ISG, and the Exchange, or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and Ether Futures from such markets and other entities.[45] The Exchange may obtain information regarding trading in the Shares and Ether Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[46] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding ether, that the Commission has no jurisdiction over the trading of ether as a commodity, and that the CFTC has regulatory jurisdiction over the trading of Ether Futures contracts and options on Ether Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[47] in general and Section 6(b)(5) of the Act[48] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 Commission has approved numerous series of Trust Issued Receipts,[49] including Commodity-Based Trust Shares,[50] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [51] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently

[45] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[46] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[47] 15 U.S.C. 78f.

[48] 15 U.S.C. 78f(b)(5).

[49] *See* Exchange Rule 14.11(f).

[50] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[51] Much like bitcoin, the Exchange believes that ether is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of ether trading render it difficult and prohibitively costly to manipulate the price of ETH. The fragmentation across ether platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ether prices through continuous trading activity challenging. To the extent that there are ether trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of ether on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the ether markets and the presence of arbitrageurs in those markets means that the manipulation of the price of ether price on any single venue would require manipulation of the global ether price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular ether trading platforms or OTC platforms. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

demonstrates that the CME Ether Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [52] with a regulated market of significant size. Both the Exchange and CME are members of ISG. The only remaining issue to be addressed is whether the ether Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[53]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[54] [55]

(a) Manipulation of the ETP

The significant market test requires that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct. In light of the similarly high correlation between spot ETH/CME Ether Futures and spot bitcoin/CME Bitcoin Futures, applying the same rationale that the Commission applied to the Bitcoin Futures ETF and in the Spot Bitcoin ETP Approval Order [56] also indicates that this test is satisfied for this proposal. As noted above, in the Spot Bitcoin ETP Approval Order, the SEC concluded that:

> . . . fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME . . . can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.[57]

The assumptions from this statement are also true for CME Ether Futures. CME Ether Futures pricing is based on pricing from spot ether markets. The statement from the Spot Bitcoin ETP Approval Order that the surveillance-sharing agreement with the CME ''can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This same logic would extend to CME Ether Futures markets where CME's surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME Ether Futures.

(b) Predominant Influence on Prices in Spot and Ether Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Ether Futures market or spot market for a number of reasons, including the significant volume in the Ether Futures market, the size of ether's market cap, and the significant liquidity available in the spot market. In addition to the Ether Futures market data points cited above, the spot market for ether is also very liquid.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to ether through OTC Ether Funds has grown into the tens of billions of dollars and more than a billion dollars of exposure through Ether Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Ether Futures ETFs and premium/discount volatility and management fees for OTC Ether Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, also believes that such concerns are now outweighed by these investor protection concerns. As

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[52] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance- sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the ISG constitutes such a surveillance sharing agreement. *See* Wilshire Phoenix Disapproval.

[53] *See* Wilshire Phoenix Disapproval.

[54] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[55] According to reports, the Commission is poised to allow the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act''), that provide exposure to ether primarily through CME Ether Futures (''ETH Futures ETFs'') as early as October 2023. Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on ETH. *https://www.bloomberg.com/news/articles/2023-08-17/sec-said-to-be-poised-to-allow-us-debut-of-ether-futures-etfs-eth#xj4y7vzkg.*

[56] *See* Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the ''Spot Bitcoin ETP Approval Order'').

[57] *See* the Spot Bitcoin ETP Approval Order at 3011–3012.

such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to ether in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Ether Futures ETFs and operating companies that are imperfect proxies for ether exposure; and (iv) providing an alternative to custodying spot ether.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed ether derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's ether holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price [58] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business and available on the Sponsor's website at *www.21shares.com,* or any successor thereto.

The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's ether during the trading day. The IIV disseminated during Regular Trading Hours to reflect changes in the value of the Trust's ether holdings during the trading day. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV may differ from the NAV due to the differences in the time window of trades used to calculate each price (the NAV uses the Index price as of 4 p.m. ET, whereas the IIV draws prices from the last trade on each Constituent Platform in an effort to produce a relevant, real-time price). The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services.

The price of ether will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is calculated daily and aggregates the notional value of ether trading activity across major ether spot trading platforms. Index data, value, and the description of the Index are based on information made publicly available by the Index Provider on its website at *https://www.cfbenchmarks.com.*

Quotation and last sale information for ether is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in ether is available from major market data vendors and from the trading platforms on which ether are traded. Depth of book information is also available from ether trading platforms. The normal trading hours for ether trading platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

In sum, the Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Ether Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. The investor protection issues for U.S. investors has grown significantly over the last several years, through roll costs for ether Futures ETFs and premium/discount volatility and management fees for OTC Ether Funds. As discussed throughout, this growth investor protection concerns need to be re-evaluated and rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establish the CME Ether Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Ether Futures market is a significant market as it relates to the CME Ether Futures market, but not a significant market as it relates to the ether spot market for the numerous reasons laid out above.

[58] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change, as Modified by Amendment No. 1

Section 19(b)(2) of the Act [59] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on September 27, 2023.[60] The 180th day after publication of the proposed rule change is March 25, 2024. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1, and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[61] designates May 24, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–CboeBZX–2023–070).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–070 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–070. 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–CboeBZX–2023–070 and should be submitted on or before April 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06174 Filed 3–22–24; 8:45 am]

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[59] 15 U.S.C. 78s(b)(2).

[60] *See supra* note 3 and accompanying text.

[61] 15 U.S.C. 78s(b)(2).

[62] 17 CFR 200.30–3(a)(12), (57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99771; File No. SR–NASDAQ–2023–035]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Hashdex Nasdaq Ethereum ETF Under Nasdaq Rule 5711(i) (Trust Units)

March 19, 2024.

On September 20, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Hashdex Nasdaq Ethereum ETF (''Fund'') under Nasdaq Rule 5711(i) (Trust Units). The proposed rule change was published for comment in the **Federal Register** on October 3, 2023.[3]

On November 15, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 18, 2023, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98563 (Sept. 27, 2023), 88 FR 68214. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nasdaq-2023-035/srnasdaq2023035.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 98948, 88 FR 81156 (Nov. 21, 2023).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 99200, 88 FR 88687 (Dec. 22, 2023).

Section 19(b)(2) of the Act[8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on October 3, 2023.[9] The 180th day after publication of the proposed rule change is March 31, 2024. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[10] designates May 30, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NASDAQ–2023–035).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06169 Filed 3–22–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99766; File No. SR–CboeEDGX–2024–007]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 11.6(n)(4) and Rule 11.10(a)(4)(D) To Permit the Use of the Post Only Order Instruction at Prices Below $1.00

March 19, 2024.

On January 19, 2024, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 11.6(n)(4) and Rule 11.10(a)(4)(D) to permit the use of the Post Only order instruction at prices below $1.00. The proposed rule change was published for comment in the **Federal Register** on February 7, 2024.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 23, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change, so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates May 7, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–CboeEDGX–2024–007).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06164 Filed 3–22–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99774; File No. SR–FICC–2024–004]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Clearing Agency Liquidity Risk Management Framework and the Clearing Agency Stress Testing Framework

March 19, 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 March 11, 2024, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) 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. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Clearing Agency Liquidity Risk Management Framework (''LRM Framework'') and the Clearing Agency Stress Testing Framework (Market Risk) (''ST Framework'' and, together with the LRM Framework, the ''Frameworks'') of FICC and its affiliates, The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC,'' and together with FICC and DTC, the ''Clearing Agencies''), as described below. FICC is filing the proposed rule change for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder,[6] as described in greater detail below.[7]

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3 and accompanying text.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99459 (February 1, 2024), 89 FR 8473 (February 7, 2024) (SR–CboeEDGX–2024–007).

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] Capitalized terms not defined herein shall have the meaning assigned to such terms in each of the Clearing Agencies' respective Rules, *available at www.dtcc.com/legal/rules-and-procedures.*

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Rules 17Ad–22(e)(4) and (7) under the Act require the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage their credit and liquidity risks.[8] The Clearing Agencies adopted the LRM Framework to set forth the manner in which they measure, monitor and manage the liquidity risks that arise in or are borne by each of the Clearing Agencies by, for example, (1) maintaining sufficient liquid resources to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the Clearing Agency in extreme but plausible market conditions, and (2) determining the amount and regularly testing the sufficiency of qualifying liquid resources by conducting stress testing of those resources.[9] In this way, the LRM Framework describes the liquidity risk management activities of each of the Clearing Agencies and how the Clearing Agencies meet the applicable requirements of Rule 17Ad–22(e)(7).[10]

The Clearing Agencies adopted the ST Framework to set forth the manner in which they identify, measure, monitor, and manage their respective credit exposures to participants and those arising from their respective payment, clearing, and settlement processes by, for example, maintaining sufficient prefunded financial resources to cover its credit exposures to each participant fully with a high degree of confidence and testing the sufficiency of those prefunded financial resources through stress testing.[11] In this way, the ST Framework describes the stress testing activities of each of the Clearing Agencies and how the Clearing Agencies meet the applicable requirements of Rule 17Ad–22(e)(4) under the Act.[12]

Proposed Changes

The Clearing Agencies propose to make clarifying and organizational changes to the LRM Framework and ST Framework designed to improve the accuracy and clarity of the documents. Specifically, the proposed changes would (i) clarify in the LRM Framework the resources currently available to FICC and NSCC to meet settlement obligations and foreseeable liquidity shortfalls; (ii) clarify in the LRM Framework the Clearing Agencies' practices for reporting and escalating liquidity risk tolerance threshold breaches; (iii) relocate the governance and escalation requirements related to certain liquidity risk management processes from the ST Framework to the LRM Framework; and (iv) make other non-substantive clarifying, organizational, and cleanup changes to the LRM Framework. The proposed changes are described in detail below.

Proposed Clarifications to Description of FICC and NSCC Liquidity Resources

The LRM Framework describes how the Clearing Agencies would address foreseeable liquidity shortfalls that would not be covered by their existing liquid resources. In the case of FICC, the LRM Framework provides, among other things, that the FICC Government Securities Division (''GSD'') and Mortgage-Backed Securities Division (''MBSD'') would look for additional repo counterparties beyond their respective existing master repurchase agreements and that MBSD may seek Members to provide additional repo capacity beyond their Capped Contingency Liquidity Facility (''CCLF'') requirements.[13] With respect to NSCC, the LRM Framework provides that NSCC may look to utilize, among other things, certain uncommitted repurchase arrangements (*e.g.,* stock loans or equity repos) or other uncommitted credit facilities to address foreseeable liquidity shortfalls. The Clearing Agencies propose to revise these statements and replace them with more accurate summaries of the types of liquidity resources available to FICC and NSCC.

The Clearing Agencies would modify the LRM Framework to state that FICC may use Clearing Fund deposits to meet its settlement obligations, as permitted under GSD Rule 4 and MBSD Rule 4,[14] either through direct use of cash deposits to the Clearing Funds or through the pledge or rehypothecation of pledged eligible Clearing Fund securities. The LRM Framework would also be revised to clarify that FICC could also address a liquidity shortfall by accessing a short-term financial commercial arrangement, such as uncommitted Master Repurchase Agreements maintained by FICC and which do not constitute qualifying liquid resources, or by utilizing its general corporate funds to the extent such funds exceed amounts needed to meet FICC's regulatory capital requirements. In addition, the Clearing Agencies would further clarify that FICC could also address a liquidity shortfall by accessing its existing repo counterparties, even if such funds may not be available to meet same-day settlement obligations. The Clearing Agencies would also delete a footnote containing a cross-reference to a previously deleted footnote.

The Clearing Agencies also propose to revise the LRM Framework to remove references to certain specific uncommitted resources of NSCC, such as stock loans, equity repos, and other uncommitted credit facilities, which are no longer available to NSCC and for which NSCC no longer maintains the necessary agreements. This would be replaced with a more general clarification that all of the Clearing Agencies may seek to address unforeseen liquidity shortfalls in excess of qualifying liquid resources through uncommitted arrangements. The Clearing Agencies would also update the LRM Framework to use more accurate terminology and descriptions of NSCC's senior note issuance program. These proposed changes are not intended to reflect actual substantive changes to the senior note issuance program.

The Clearing Agencies believe the proposed changes would enhance the LRM Framework by more precisely describing the existing tools and resources that FICC and NSCC may utilize to address foreseeable liquidity

[8] *See* 17 CFR 240.17Ad–22(e)(4) and (7).

[9] *See* Securities Exchange Act Release No. 82377 (Dec. 21, 2017), 82 FR 61617 (Dec. 28, 2017) (File Nos. SR–DTC–2017–004; SR–FICC–2017–008; SR–NSCC–2017–005).

[10] 17 CFR 240.17Ad–22(e)(7).

[11] *See* Securities Exchange Act Release No. 82368 (Dec. 19, 2017), 82 FR 61082 (Dec. 26, 2017) (SR–DTC–2017–005; SR–FICC–2017–009; SR–NSCC–2017–006).

[12] 17 CFR 240.17Ad–22(e)(4).

[13] *See* FICC GSD Rule 22A, Section 2a and FICC MBSD Rule 17, Section 2a, *supra* note 7.

[14] *See supra* note 7.

shortfalls in compliance with Rule 17Ad–22(e)(7)(viii) under the Act.[15]

Proposed Clarifications to Liquidity Risk Tolerances

The LRM Framework describes the manner in which the liquidity risks of the Clearing Agencies are assessed and escalated through liquidity risk management controls that include a statement of risk tolerances that are specific to liquidity risk (''Liquidity Risk Tolerance Statement''). The Clearing Agencies propose to revise the LRM Framework to provide additional clarity and accuracy around their existing processes for reporting and escalating liquidity risk tolerances.

The Clearing Agencies would revise the LRM Framework to remove certain statements regarding the reporting of risk tolerances and instead clarify that liquidity risk tolerance thresholds are communicated to relevant personnel and the management risk committee as prescribed by the Liquidity Risk Tolerance Statement of the Clearing Agencies' Corporate Risk Management Policy, with necessary escalation and analyses performed in accordance with a newly proposed section of the LRM Framework concerning liquidity risk governance and escalations (described in further detail below). This would include the removal of an outdated statement concerning potential responses to risk tolerance threshold reporting (*e.g.,* responses such as risk avoidance, risk mitigation, risk acceptance), and instead focus on the required escalations set forth in the Liquidity Risk Tolerance Statements to be more consistent with the process as described in the Corporate Risk Management Policy. The Clearing Agencies would also remove specific references to the Stress Testing Team in communicating liquidity risk tolerance thresholds because this task may be performed by staff within the overall Liquidity Risk and Stress Testing function of DTCC. In addition, the LRM Framework would be revised to clarify that the liquidity risk profile prepared by the Operational Risk Management department (''ORM'') is reviewed with senior management in the Group Chief Risk Office (and not just within the Liquidity Risk Management team) and to update the name of the risk profile used by ORM to monitor liquidity risk management. The Clearing Agencies believe the proposed changes would enhance the LRM Framework by improving the accuracy and clarity of the document as it relates to liquidity risk tolerance reporting.

[15] 17 CFR 240.17Ad–22(e)(7)(viii).

Proposed Clarifications to Liquidity Risk Governance and Escalation

On November 17, 2022, the Commission approved a proposed rule change by the Clearing Agencies to amend the ST Framework and LRM Framework to, among other things, relocate certain descriptions of the Clearing Agencies' liquidity stress testing activities from the LRM Framework to the ST Framework.[16] This included certain requirements related to liquidity risk escalations, and in particular, the process for escalating liquidity shortfalls. The Clearing Agencies now propose to add a new section to the LRM Framework to relocate requirements related to liquidity risk governance and the escalation of liquidity shortfalls back into the LRM Framework because these activities and processes are primarily driven the Clearing Agencies' Liquidity Risk Management team.

The Clearing Agencies propose to add a new Liquidity Risk Governance sub-section to the LRM Framework, which would contain the same information as the Stress Test Governance section of the ST Framework but with modifications to refer to liquidity risk policies, procedures and risk tolerance statements rather than stress testing policies, procedures and risk tolerance statements. Additionally, the Clearing Agencies would relocate the Escalation of Liquidity Shortfalls section of the ST Framework to the LRM Framework with certain modifications and drafting clarifications. Specifically, the Clearing Agencies would revise and clarify the manner in which liquidity risk tolerance threshold breaches and liquidity shortfalls are identified, reported and escalated by stating that liquidity risk tolerance threshold breaches and liquidity shortfalls identified through the daily liquidity studies are reported and escalated in accordance with the Clearing Agencies' Liquidity Risk Tolerance Statement. The Clearing Agencies would also clarify that the Liquidity Risk Management team performs the daily analysis of any calculated liquidity shortfalls. In addition, the Clearing Agencies would clarify that the management risk committee does not directly evaluate the adequacy of liquidity resources as a first line function but rather reviews management evaluations and recommendations related to the adequacy of such resources, which may include adjusting the CCP's liquidity risk management methodology, model parameters, and any other relevant aspect of its liquidity risk management framework, or otherwise supplementing liquid resources. The ST Framework would also be revised to state that liquidity risk tolerance and liquidity shortfall reporting and escalations are governed by the LRM Framework.

[16] *See* Securities Exchange Act Release No. 96345 (Nov. 17, 2022), 87 FR 71714 (Nov. 23, 2022) (File Nos. SR–DTC–2022–006; SR–FICC–2022–004; SR–NSCC–2022–006).

Other Clarifying, Cleanup and Organizational Changes

Finally, the Clearing Agencies propose other clarifying, cleanup and organizational changes to the LRM Framework to improve the accuracy and clarity of the document. The Clearing Agencies would relocate the definition of ''qualifying liquid resources'' from Section 5 of the LRM Framework to the Glossary of Key Terms in Section 2, with minor modifications to associated footnotes and citations, so that this term is clearly defined before its first usage within the LRM Framework. The Clearing Agencies would also update the Glossary of Key Terms to refer to the DTCC Treasury ''department'' rather than DTCC Treasury ''group'' to align with other references to the DTCC Treasury department throughout the LRM Framework and remove the defined term ''Stress Testing Team'' because specific responsibilities of this team would no longer be described in LRM Framework as they are covered in the ST Framework.

In addition, Clearing Agencies would make several cleanup changes in the Liquidity Risk Measurement section of the LRM Framework to remove an outdated reference to previously removed sections of the LRM Framework, refer to the new Liquidity Risk Governance and Escalation Procedures section of the LRM Framework, and remove a specific reference to the Stress Test Team (the responsibilities of which are addressed in the ST Framework).

Finally, the Clearing Agencies would make a minor clarification in the LRM Framework regarding the annual testing of certain uncommitted liquidity providers, which are non-qualifying liquid resources of FICC.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Clearing Agencies believe that the proposed changes are consistent with Section

17A(b)(3)(F) of the Act[17] and Rule 17Ad–22(e)(7) under the Act[18] for the reasons set forth below.

Section 17A(b)(3)(F) of the Act[19] requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The proposed changes would improve the accuracy and clarity of the Frameworks, and specifically the LRM Framework, by (i) clarifying in the LRM Framework the resources currently available to FICC and NSCC to meet settlement obligations and liquidity shortfalls; (ii) clarifying in the LRM Framework the Clearing Agencies' practices for reporting and escalating liquidity risk tolerance thresholds; (iii) relocating the governance and escalation requirements related to certain liquidity risk management processes from the ST Framework to the LRM Framework; and (iv) making other non-substantive clarifying, organizational and cleanup changes to the LRM Framework. The LRM Framework and the policies and procedures that support the LRM Framework help assure that each Clearing Agency can effectively measure, monitor, and manage their liquidity risks to promote the timely settlement of securities transactions. The proposed changes would enhance the LRM Framework by improving the accuracy and clarity of the descriptions of key aspects of the Clearing Agencies' liquidity risk management processes, thereby facilitating the Clearing Agencies' ability to continue the prompt and accurate clearance and settlement of securities transactions as required by Section 17A(b)(3)(F) of the Act.

Rule 17Ad–22(e)(7) under the Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.[20] As discussed above, the LRM Framework and the policies and procedures that support the LRM Framework help assure that each Clearing Agency can effectively measure, monitor, and manage their liquidity risks. The Clearing Agencies believe that by improving the accuracy and clarity of the descriptions of key aspects of the Clearing Agencies' liquidity risk management processes, the proposed changes would facilitate the maintenance of written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risks as required by Rule 17Ad–22(e)(7) under the Act.

In addition, Rule 17Ad–22(e)(7)(viii) under the Act specifically requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to address foreseeable liquidity shortfalls that would not be covered by the covered clearing agency's liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.[21] The Clearing Agencies believe that including additional clarity and specificity in the LRM Framework concerning the types of liquidity resources available to FICC and NSCC to address foreseeable liquidity shortfalls would further promote compliance with Rule 17Ad–22(e)(7)(viii) under the Act.

For these reasons, the Clearing Agencies believe the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[22] and Rule 17Ad–22(e)(7) thereunder.[23]

(B) Clearing Agency's Statement on Burden on Competition

The proposed changes would enhance the Frameworks, and specifically the LRM Framework, by providing additional clarity and accuracy concerning the Clearing Agencies' existing liquidity risk management processes. The Frameworks, and the proposed rule changes described herein, would not advantage or disadvantage any particular participant or user of the Clearing Agencies' services or unfairly inhibit access to the Clearing Agencies' services. The Clearing Agencies therefore do not believe that the proposed rule change would have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the SEC's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

The Clearing Agencies reserve the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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:

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17Ad–22(e)(7).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] *See* 17 CFR 240.17Ad–22(e)(7).

[21] *See* 17 CFR 240.17Ad–22(e)(7)(viii).

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(e)(7).

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

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–FICC–2024–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2024–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2024–004 and should be submitted on or before April 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06163 Filed 3–22–24; 8:45 am]

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[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99770; File No. SR–PHLX–2024–14]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 4

March 19, 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 March 15, 2024, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 4.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed pricing change on February 29, 2024 to be operative on March 1, 2024 (SR–Phlx–2024–07). On March 12, 2024, the Exchange withdrew SR–Phlx–2024–07 and submitted SR–Phlx–2024–11. On March 15, 2024, the Exchange withdrew SR–Phlx–2024–11 and submitted this filing.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend its Pricing Schedule within Options 7, Section 4, ''Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A).'' Specifically, Phlx proposes to: (1) lower the Professional[4] Floor[5] Options Transaction Charges[6] in Multiply Listed Penny and Non-Penny Symbols; [7] (2) increase the Lead Market Maker[8] and Market Maker[9] Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols; and (3) increase the Monthly Firm Fee Cap. Each change will be described below.

Floor Options Transaction Charges

Today, the Exchange assesses Options Transaction Charges in Multiply Listed options, including options overlying equities, ETFs, ETNs and indexes and excluding options in SPY[10] and broad-

[4] The term ''Professional'' applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[5] The term ''floor transaction'' is a transaction that is effected in open outcry on the Exchange's Trading Floor. *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[6] Options Transaction Charges are per contract. Floor transaction fees apply to any ''as of'' or ''reversal'' adjustments for manually processed trades originally submitted electronically or through FBMS. *See* Phlx's Pricing Schedule at Options 7, Section 4, footnote 8.

[7] For consistency, the Exchange proposes to capitalize the term ''non-Penny'' in the table in Options 7, Section 4 of the Pricing Schedule.

[8] The term ''Floor Lead Market Maker'' is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange's Trading Floor. *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[9] The term ''Floor Market Maker'' is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[10] Transactions in SPY originating on the Exchange floor are subject to the Multiply Listed Options Fees (see Multiply Listed Options Fees in Options 7, Section 4). However, if one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then these fees will apply to the transactions which originated on the Exchange floor and contracts that are executed electronically on all sides of the transaction. The one side of the transaction which originates on the Exchange floor will count toward

Continued

based index options symbols listed within Options 7, Section 5.A. The Exchange currently assesses the following Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols: $0.05 per contract for a Professional, $0.35 per contract for a Lead Market Maker and Market Maker, and $0.25 per contract for a Broker-Dealer [11] and Firm.[12] Customers [13] are not assessed an Options Transaction Charge in Multiply Listed Penny or Non-Penny Symbols.

At this time, the Exchange proposes to decrease the Professional Floor Options Transaction Charges in Penny and Non-Penny Symbols from $0.05 to $0.00 per contract. The Exchange believes the decreased Professional Options Transaction Charges will attract a greater amount of Professional orders to Phlx's Trading Floor. The Exchange notes that NYSE Arca, Inc. (''NYSE Arca'') also assesses no Professional Customer fee for manual executions.[14]

At this time, the Exchange proposes to increase the Lead Market Maker and Market Maker Floor Options Transaction Charges in Penny and Non-Penny Symbols from $0.35 to $0.50 per contract. While the Exchange is increasing the Lead Market Maker and Market Maker Floor Options Transaction Charge by $0.15 per contract (increase from $0.35 to $0.50 per contract), the Exchange believes that its pricing will continue to attract order flow to the Exchange. Today, Lead Market Makers and Market Makers are subject to a ''Monthly Market Maker Cap'' of $500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) Qualified Contingent Cross or ''QCC'' Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)).[15] The Exchange proposes this increased fee for business reasons and to encourage competition on its trading floor. The Exchange believes Lead Market Makers and Market Makers will continue to quote aggressively, adding liquidity to the trading floor, so that they may participate in transactions as they do today. Lead Market Makers and Market Makers have a time and place advantage in the trading crowd which the Exchange believes increases competition on its trading floor to the benefit of other floor participants.

Monthly Firm Fee Cap

Today, Firms are subject to a $200,000 ''Monthly Firm Fee Cap.'' Today, Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month that exceed the Monthly Firm Fee Cap per member or member organization, when such members or member organizations are trading in their own proprietary account, are subject to a reduced transaction fee of $0.02 per capped contract unless there is no fee or the fee is waived. Today, all dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in this Options 7, Section 4) are excluded from the Monthly Firm Fee Cap. Transactions in broad-based index options symbols listed within Options 7, Section 5.A. are excluded from the Monthly Firm Fee Cap and QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.[16]

At this time, the Exchange proposes to increase the Monthly Firm Fee Cap from a cap of $200,000 to a monthly cap of $250,000 as a competitive response to a similar change on NYSE Arca.[17] The Exchange believes that aligning its firm cap with NYSE Arca's firm cap will allow it to compete for transactions on its trading floor. The Exchange believes that increasing the Monthly Firm Fee Cap will continue to lower fees for Firms that transact certain qualifying volume on Phlx, thus enabling these Firms the ability to lower costs while continuing to incentivize Firms to transact volume on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its

the volume which qualifies a participant for the Simple Order Rebate for Adding Liquidity for Lead Market Makers and Market Makers in SPY. *See* Options 7, Section 3, Part C.

[11] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[12] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation (''OCC''). *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[13] The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at OCC which is not for the account of a broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(b)(45)). *See* Phlx's Pricing Schedule at Options 7, Section 1(c).

[14] NYSE Arca modified its fees for Professional Customer manual executions from a $0.25 per contract fee for such executions, which fee had been waived for the period August 1, 2022 to December 31, 2022, to $0.00 per contract. NYSE Arca stated that the proposed change was intended to continue to attract manually executed Professional Customer orders to the Exchange, and the Exchange believed that all market participants stood to benefit from an increase in such volume, which would promote market depth, facilitate tighter spreads and enhance price discovery, and may lead to a corresponding increase in order flow from other market participants as well. *See* Securities Exchange Act Release No. 96763 (January 27, 2023), 88 FR 7119 (February 2, 2023) (S (SR–NYSEARCA–2023–09).

[15] The trading activity of separate Lead Market Maker and Market Maker member organizations are aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) are excluded from the Monthly Market Maker Cap. Floor Lead Market Makers or Floor Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap are assessed: $0.05 per contract Fee for Adding Liquidity in Penny Symbols; $0.18 per contract Fee for Removing Liquidity in Penny Symbols; $0.18 per contract in Non-Penny Symbols; and $0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (''COLA''). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be assessed $0.18 per contract.

[16] For purposes of the Monthly Firm Fee Cap, members and member organizations must notify the Exchange in writing of all accounts in which the member or member organization is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap. *See* Options 7, Section 4.

[17] NYSE Arca modified its Monthly Fee Cap in November 2023 by raising the cap from $200,000 to $250,000. *See* Securities Exchange Act Release No. 99021 (December 1, 2023), 88 FR 84030 (November 27, 2023 (SR–NYSEArca–2023–80).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4) and (5).

broader forms that are most important to investors and listed companies.'' [20]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [21] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[22] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [23]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [24] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Options Transaction Charges

The Exchange's proposal to decrease the Professional Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols in Penny and Non-Penny Symbols from $0.05 to $0.00 per contract is reasonable because the decreased fee should attract a greater amount of Professional orders to Phlx's Trading Floor. Today, Phlx assesses Professionals a lower Floor Options Transaction Charge as compared to Lead Market Makers, Broker-Dealers and Firms with respect to Floor Options Transaction Charges. Similarly, today, BOX Exchange LLC (''BOX'') assesses Professionals lower manual transaction fees as compared to Broker Dealers and Market Makers.[25] By decreasing its Professional Floor Options Transaction Charge, the Exchange believes it will be able to compete more effectively for options order flow because of the lower Professional fee. Also, the Exchange believes the decreased Professional Options Transaction Charges will attract a greater number of Professional orders to Phlx's Trading Floor. The Exchange notes that NYSE Arca, Inc. (''NYSE Arca'') also assesses no Professional Customer fee for manual executions.[26]

The Exchange's proposal to decrease the Professional Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols in Penny and Non-Penny Symbols from $0.05 to $0.00 per contract is equitable and not unfairly discriminatory. Today, Customers are not assessed an Options Transaction Charge in Multiply Listed Penny or Non-Penny Symbols because Customer order flow is unique. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Marker Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that lowering the Professional Floor Options Transaction Charges is similarly beneficial as the lower fees may cause market participants to select Phlx's Trading Floor as a venue to send Professional order flow, which benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all market participants. Today, Lead Market Makers and Market Makers are assessed the highest Penny and Non-Penny Floor Options Transaction Charges. Customers are not assessed a Penny or Non-Penny Options Transaction Charge. With this proposal, Professionals would continue to be assessed a lower Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols as compared to Lead Market Makers and Market Makers. Lead Market Makers and Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a Floor Broker to represent their trading interest on the Trading Floor as compared to a Lead Market Maker or Market Maker that could directly transact such orders on the Trading Floor. Further, the Exchange believes that to attract orders from Professionals, Broker-Dealers, or Firms, via a Floor Broker, the rates must be competitive with rates at other trading floors. With respect to Firms, the Exchange notes that Firms are subject to a Monthly Firm Fee Cap. Firm Floor Option Transaction Charges along with Qualified Contingent Cross Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account.[27] Finally, with respect to Broker-Dealers, today the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (''BD-Customer Facilitation''), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.[28] The Exchange notes that both Firms and Broker-Dealers have the ability to reduce their Options Transaction Charges as compared to Professionals.

The Exchange believes it is equitable and not unfairly discriminatory to assess Professionals no Floor Options Transaction Charge the same as a Customer and more favorable than Firms, and Broker-Dealers, Lead Market Makers, and Market Makers. The potential increased volume would create better trading opportunities that benefit all market participants. Specifically, greater volume and liquidity from increased order flow could create more trading opportunities and tighter spreads. Assessing lower Floor Options Transaction Charges for Professional Customers compared to

[20] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[21] *NetCoalition* v. *SEC*, 615 F.3d 525 (D.C. Cir. 2010).

[22] *See* NetCoalition, at 534—535.

[23] *Id.* at 537.

[24] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca-2006–21)).

[25] BOX assesses Professional Customers a $0.10 per contract manual transaction fee in Penny and Non-Penny Symbols. A Broker Dealer is assessed a $0.025 per contract manual transaction fee in Penny and Non-Penny Symbols and a Market Maker is assessed a $0.35 per contract manual transaction fee in Penny and Non-Penny Symbols. BOX does not assess Public Customers or Broker Dealers facilitating a Public Customer a Penny and Non-Penny Interval Classes manual transactions fee. *See* BOX's Fee Schedule at Section V.

[26] NYSE Arca modified its fees for Professional Customer manual executions from a $0.25 per contract fee for such executions, which fee had been waived for the period August 1, 2022 to December 31, 2022, to $0.00 per contract. NYSE Arca stated that the proposed change is intended to continue to attract manually executed Professional Customer orders to the Exchange, and the Exchange believes that all market participants stand to benefit from an increase in such volume, which would promote market depth, facilitate tighter spreads and enhance price discovery, and may lead to a corresponding increase in order flow from other market participants as well. *See* Securities Exchange Act Release No. 96763 (January 27, 2023), 88 FR 7119 (February 2, 2023) (S (SR–NYSEARCA–2023–09).

[27] *See* Options 7, Section 4.

[28] *See* Options 7, Section 4.

Lead Market Makers, Market Makers, Firms, and Broker-Dealers is not novel as BOX currently assesses lower fees for Professional Customers as compared to Broker Dealers and Market Makers.[29]

The Exchange's proposal to increase the Lead Market Maker and the Market Maker Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols from $0.35 to $0.50 per contract is reasonable, equitable and not unfairly discriminatory because Lead Market Makers and Market Makers benefit from having access to interact with orders that are made available in open outcry on the Trading Floor. Lead Market Makers and Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. Further, Lead Market Makers and Market Makers have the benefit of trading on any Trading Floor or in any electronic venue if they so choose. The Exchange believes that it has set its Floor Options Transaction Charges for Lead Market Makers and Market Makers in such a way as to balance the need to attract additional orders to the trading floor while continuing to attract Lead Market Makers and Market Makers to its Trading Floor. The Exchange proposes this increased fee for business reasons and to encourage competition on its trading floor. The Exchange believes Lead Market Makers and Market Makers will continue to quote aggressively, adding liquidity to the trading floor, so that they may participate in transactions as they do today. Today, Lead Market Makers and Market Makers are subject to a ''Monthly Market Maker Cap'' of $500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)).[30]

The Exchange is not proposing to amend the Monthly Market Maker Cap, which affords Lead Market Makers and Market Makers the ability to pay lower Floor Options Transaction Charges as compared to Non-Customers [31] once they have capped for the month. To the extent that Phlx's increased fee for Lead Market Makers and Maker Makers was priced too high, the Exchange would lose liquidity providers on its Trading Floor. Competitive forces would serve to constrain the Exchange's ability to overprice certain services on its market.

Monthly Firm Fee Cap

The Exchange's proposal to increase the Monthly Firm Fee Cap from a cap of $200,000 to a monthly cap of $250,000 is reasonable because, despite the increase, the Monthly Firm Fee Cap will continue to lower fees for Firms that transact certain qualifying volume on Phlx, thus enabling these Firms the ability to lower costs while continuing to incentivize Firms to direct order flow to the Exchange to achieve the benefits of reducing their fees. Further, increasing the monthly firm cap to $250,000 is a competitive response to a similar change on NYSE Arca.[32] The Exchange believes that aligning its firm cap with NYSE Arca's firm cap will allow it to compete for transactions on its trading floor.

The Exchange's proposal to increase the Monthly Firm Fee Cap from a cap of $200,000 to a monthly cap of $250,000 is equitable and not unfairly discriminatory as other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in Multiply Listed Penny or Non-Penny Symbols.[33] Customer liquidity benefits all market participants by providing more trading opportunities. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Today, Lead Market Makers and Market Makers are subject to a Monthly Market Maker Cap.[34] With respect to Broker-Dealers, today, the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (''BD-Customer Facilitation''), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.[35] Finally, today, Professional Floor Options Transaction Charges are proposed to be $0.00 per contract, similar to Customers and more favorable than Firms.[36] Additionally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because members and member organizations that are JBOs [37] could be subject to the

[29] *See supra* 25 above.

[30] The trading activity of separate Lead Market Maker and Market Maker member organizations are aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) are excluded from the Monthly Market Maker Cap. Floor Lead Market Makers or Floor Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap are assessed: $0.05 per contract Fee for Adding Liquidity in Penny Symbols; $0.18 per contract Fee for Removing Liquidity in Penny Symbols; $0.18 per contract in Non-Penny Symbols; and $0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (''COLA''). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be assessed $0.18 per contract.

[31] The term ''Non-Customer'' applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs. *See* Options 7, Section 1(c).

[32] NYSE Arca modified its Monthly Fee Cap in November 2023 by raising the cap from $200,000 to $250,000. *See* Securities Exchange Act Release No. 99021 (December 1, 2023), 88 FR 84030 (November 27, 2023 (SR–NYSEArca–2023–80).

[33] *See* Options 7, Section 4.

[34] *See* Options 7, Section 4. Lead Market Makers and Market Makers are subject to a ''Monthly Market Maker Cap'' of $500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) is excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows: $0.05 per contract Fee for Adding Liquidity in Penny Symbols; $0.18 per contract Fee for Removing Liquidity in Penny Symbols; $0.18 per contract in Non-Penny Symbols; and $0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (''COLA''). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

[35] *See* Options 7, Section 4.

[36] *See* Options 7, Section 4. Professional Floor Options Transaction Charges for Penny and Non-Penny Symbols are $0.05 per contract whereas Firm Floor Options Transaction Charges for Penny and Non-Penny Symbols are $0.25 per contract. The Exchange is proposing to reduce the Floor Options Transaction Charges to $0.00 per contract.

[37] The term ''Joint Back Office'' or ''JBO'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO is priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (''JBO Broker'') subject to the requirements of Regulation T Section 220.7 of the

Monthly Firm Fee Cap, as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not members or member organizations to seek to become members or member organizations to further reduce their transaction fees. Finally, other market participants may interact with the order flow submitted by Firms to Phlx to reach the Monthly Firm Fee Cap.

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.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another venue in which to submit orders. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

Floor Options Transaction Charges

The Exchange's proposal to decrease the Professional Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols in Penny and Non-Penny Symbols from $0.05 to $0.00 per contract does not impose an undue burden on competition. Today, Customers are not assessed an Options Transaction Charge in Multiply Listed Penny or Non-Penny Symbols because Customer order flow is unique. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Marker Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that lowering the Professional Floor Options Transaction Charges is similarly beneficial as the lower fees may cause market participants to select Phlx's Trading Floor as a venue to send Professional order flow, which benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all market participants. Today, Lead Market Makers and Market Makers are assessed the highest Penny and Non-Penny Floor Options Transaction Charges. Customers are not assessed a Penny or Non-Penny Options Transaction Charge. With this proposal, Professionals would continue to be assessed a lower Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols as compared to Lead Market Makers and Market Makers. Lead Market Makers and Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a Floor Broker to represent their trading interest on the Trading Floor as compared to a Lead Market Maker or Market Maker that could directly transact such orders on the Trading Floor. Further, the Exchange believes that to attract orders from Professionals, Broker-Dealers, or Firms, via a Floor Broker, the rates must be competitive with rates at other trading floors. With respect to Firms, the Exchange notes that Firms are subject to a Monthly Firm Fee Cap. Firm Floor Option Transaction Charges along with Qualified Contingent Cross Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account.[38] Finally, with respect to Broker-Dealers, today the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (''BD-Customer Facilitation''), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.[39] The Exchange notes that both Firms and Broker-Dealers have the ability to reduce their Options Transaction Charges as compared to Professionals. Further, the Exchange believes it does not impose an undue burden on competition to assess Professionals no Floor Options Transaction Charge the same as a Customer and more favorable than Firms, and Broker-Dealers, Lead Market Makers, and Market Makers. The potential increased volume would create better trading opportunities that benefit all market participants. Specifically, greater volume and liquidity from increased order flow could create more trading opportunities and tighter spreads. Assessing lower Floor Options Transaction Charges for Professional Customers compared to Lead Market Makers, Market Makers, Firms, and Broker-Dealers is not novel as BOX currently assesses lower fees for Professional Customers as compared to Broker Dealers and Market Makers.[40]

Monthly Firm Fee Cap

The Exchange's proposal to increase the Monthly Firm Fee Cap from a cap of $200,000 to a monthly cap of $250,000 does not impose an undue burden on competition because other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in Multiply Listed Penny or Non-Penny Symbols.[41] Customer liquidity benefits all market participants by providing more trading opportunities. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Today, Lead Market Makers and Market Makers are subject to a Monthly Market Maker Cap.[42] With respect to Broker-Dealers,

Federal Reserve System as further discussed at Options 6D, Section 1. *See* Options 7, Section 1(c).

[38] *See* Options 7, Section 4.

[39] *See* Options 7, Section 4.

[40] *See supra* 25 above.

[41] *See* Options 7, Section 4.

[42] *See* Options 7, Section 4. Lead Market Makers and Market Makers are subject to a ''Monthly Market Maker Cap'' of $500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) is excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and

Continued

today, the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (''BD-Customer Facilitation''), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.[43] Finally, today, Professional Floor Options Transaction Charges are proposed to be $0.00 per contract, similar to Customers and more favorable than Firms.[44] Additionally, the Exchange believes that the proposal does not impose an undue burden on competition because members and member organizations that are JBOs [45] could be subject to the Monthly Firm Fee Cap, as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not members or member organizations to seek to become members or member organizations to further reduce their transaction fees. Finally, other market participants may interact with the order flow submitted by Firms to Phlx to reach the Monthly Firm Fee Cap.

(ii) have reached the Monthly Market Maker Cap will be assessed fees as follows: $0.05 per contract Fee for Adding Liquidity in Penny Symbols; $0.18 per contract Fee for Removing Liquidity in Penny Symbols; $0.18 per contract in Non-Penny Symbols; and $0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (''COLA''). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

[43] *See* Options 7, Section 4.

[44] *See* Options 7, Section 4. Professional Floor Options Transaction Charges for Penny and Non-Penny Symbols are $0.05 per contract whereas Firm Floor Options Transaction Charges for Penny and Non-Penny Symbols are $0.25 per contract. The Exchange is proposing to reduce the Floor Options Transaction Charges to $0.00 per contract.

[45] The term ''Joint Back Office'' or ''JBO'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO is priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (''JBO Broker'') subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Options 6D, Section 1. *See* Options 7, Section 1(c).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[46]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PHLX–2024–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–PHLX–2024–14. 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–PHLX–2024–14 and should be submitted on or before April 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06175 Filed 3–22–24; 8:45 am]

BILLING CODE 8011–01–P

[46] 15 U.S.C. 78s(b)(3)(A)(ii).

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99773; File No. SR–NYSENAT–2024–10]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Change To Amend Its Schedule of Fees and Rebates

March 19, 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 March 14, 2024, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates (''Fee Schedule'') to (1) include a rebate for non-tiered orders removing liquidity in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO; and (2) delete Removing Tiers 4 and 5 as obsolete. The Exchange proposes to implement the rule change on March 1, 2024. The proposed 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees and Rebates (''Fee Schedule'') to (1) include a rebate for non-tiered orders removing liquidity in securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO; and (2) delete Removing Tiers 4 and 5 as obsolete.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing and liquidity-removing orders by offering further incentives for ETP Holders to send additional removing liquidity to the Exchange.

The Exchange proposes to implement the rule change on March 1, 2024.

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [3]

As the Commission itself has recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [4] Indeed, equity trading is currently dispersed across 16 exchanges,[5] 31 alternative trading systems,[6] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market.[7] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 2%.[8]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain products, in response to fee changes. While it is not possible to know a firm's reason for moving order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange trading venues to which a firm routes order flow. These fees can vary from month to month, and not all are publicly available. With respect to non-marketable order flow that would provide liquidity on an exchange, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange utilizes a ''taker-maker'' or inverted fee model to attract orders that provide liquidity at the most competitive prices. Under the taker-maker model, offering rebates for taking (or removing) liquidity increases the likelihood that market participants will send orders to the Exchange to trade with liquidity providers' orders. This increased taker order flow provides an incentive for market participants to send orders that provide liquidity. The Exchange generally charges fees for order flow that provides liquidity. These fees are reasonable due to the additional marketable interest (in part attracted by the Exchange's rebate to remove liquidity) with which those order flow providers can trade.

Proposed Rule Change

To respond to this competitive environment, the Exchange proposes the following changes to its Fee Schedule designed to provide order flow providers with additional incentives to route order flow to the Exchange. As described above, ETP Holders have a choice of where to send their order flow.

The Exchange proposes to add a rebate of $0.0016 per share for non-tiered orders removing liquidity in securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO, which currently receive no rebate. The current rate of ''no charge'' for removing liquidity that executes at a price better than the contra-side NBBO would remain unchanged. The proposed rebate is competitive and would be similar to the rebates provided by other markets for non-tiered orders removing liquidity.[9] Because this rebate for non-tiered orders removing liquidity would be greater than the $0.0007 rebate per share currently available under Removing Tier 5 and the $0.0015 rebate per share currently available under Removing Tier 4, the Exchange proposes to delete Removing Tiers 4 and 5 as obsolete.

The Exchange believes that the proposed rebate of $0.0016 per share for non-tiered orders removing liquidity that do not execute at a price better than the contra-side NBBO will incentivize more ETP Holders to route liquidity-removing order flow to the Exchange. The Exchange believes that the increased order flow that may result from these proposed changes would in turn support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders.

As noted, the Exchange operates in a competitive environment. The Exchange

[3] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[4] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[5] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[6] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[7] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[8] *See id.*

[9] *See, e.g.,* Cboe EDGA Exchange Fee Schedule, available at *https://www.cboe.com/us/equities/membership/fee_schedule/edga/* (providing $0.0016 standard rebate for removing displayed liquidity).

does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Based on the profile of firms generally, the Exchange believes that with the proposed change, additional ETP Holders could choose to direct order flow to the Exchange. Without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional ETP Holders directing orders to the Exchange.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

As discussed above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12] While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [13]

Given the current competitive environment, the Exchange believes that the proposal represents a reasonable attempt to attract additional order flow to the Exchange while aligning the Exchange's fees with those charged by other markets. Specifically, the proposed rebate of $0.0016 for non-tiered orders removing liquidity in securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO is reasonable because it is competitive when compared to the rebates offered by other markets for non-tiered orders removing liquidity.[14] Additionally, because this rebate for non-tiered orders removing liquidity would be greater than the $0.0007 rebate per share currently available under Removing Tier 5 and the $0.0015 rebate per share currently available under Removing Tier 4, the Exchange believes it is reasonable to delete Removing Tiers 4 and 5 as obsolete. The Exchange further believes that not offering a non-tiered rebate for removing orders that execute at a price better than the contra-side NBBO is reasonable because such orders receive the benefit of an execution at a price superior to the best protected quote in the national market system (including the Exchange's best protected bid or offer). The Exchange notes that this is in line with current Exchange Removing Tiers 1–5.

The Exchange believes that the proposal represents a reasonable effort to promote price discovery and enhanced order execution opportunities for ETP Holders. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution opportunities.

The Proposal Is an Equitable Allocation of Fees and Rebates

The Exchange believes the proposed rule change equitably allocates its fees among its market participants. The proposed change would continue to encourage ETP Holders to both submit removing liquidity to the Exchange and execute orders on the Exchange, thereby contributing to robust levels of liquidity, to the benefit of all market participants.

The Exchange believes that providing a rebate of $0.0016 for non-tiered orders removing liquidity in securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO and deleting the obsolete Removing Tiers 4 and 5 is an equitable allocation of fees and credits. The Exchange believes that providing such a rebate for non-tiered orders removing liquidity will encourage executions on the Exchange because it is competitive and would be similar to the rebates provided by other markets for non-tiered orders removing liquidity.[15] To the extent that the proposed change attracts order flow to the Exchange, this order flow would make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would continue to improve market quality for all market participants on the Exchange and, as a consequence, continue to attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Exchange further believes that the proposal constitutes an equitable allocation of fees and credits because all similarly situated ETP Holders and other market participants would be eligible for the same general and tiered rebates for removing liquidity. Moreover, the proposed change is equitable because the proposed rebates would apply equally to all similarly situated ETP Holders. The proposal neither targets nor will it have a disparate impact on any particular category of market participant.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders and all ETP Holders would be subject to the same $0.0016 rebate per share for non-tiered orders removing liquidity in securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO, and the same deletion of obsolete Removing Tiers 4 and 5. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees and credits.

The Exchange further believes that the proposed change would not permit unfair discrimination among ETP

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) & (5).

[12] *See* Regulation NMS, *supra* note 4, at 37499.

[13] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[14] *See supra* note 10.

[15] *See id.*

Holders because the non-tiered and tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct order flow, and the Exchange believes there are additional ETP Holders that could qualify if they chose to direct their order flow to the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity and order flow to a public exchange, thereby enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [17]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. As described above, the Exchange believes that the proposed change would provide additional incentives for market participants to route liquidity-removing orders to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity. The proposed rebate for non-tiered orders removing liquidity in securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO would be available to all similarly-situated market participants, and thus, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and off-exchange venues. Because competitors are free to modify their own fees and rebates in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [18] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSENAT–2024–10 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–NYSENAT–2024–10. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–NYSENAT–2024–10, and should be submitted on or before April 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06171 Filed 3–22–24; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78f(b)(8).

[17] Regulation NMS, 70 FR at 37498–99.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20218 and #20219; WEST VIRGINIA Disaster Number WV–20002]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of West Virginia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA–4756–DR), dated 02/27/2024.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 08/28/2023 through 08/30/2023.

DATES: Issued on 02/27/2024.

Physical Loan Application Deadline Date: 04/29/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 11/27/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/27/2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Harrison, Kanawha, Roane.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 202186 and for economic injury is 202190.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–06228 Filed 3–22–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice 12360]

60-Day Notice of Proposed Information Collection: Global Community Liaison Office (GCLO) Professional Development Fellowship (PDF) Application

ACTION: Notice of request for public comment.

SUMMARY: The Department of State (the Department) is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to May 24, 2024.

ADDRESSES: You may submit comments by the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2024–0007'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* GCLO Professional Development Fellowship (PDF) Application.
- *OMB Control Number:* 1405–0229.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Global Talent Management, Global Community Liaison Office (GTM/GCLO).
- *Form Number:* DS–4297.
- *Respondents:* The PDF program is open to spouses and partners of direct-hire U.S. Government employees from all agencies serving overseas under Chief of Mission authority.
- *Estimated Number of Responses:* 255.
- *Average Time per Response:* 2.75 hours.
- *Total Estimated Burden Time:* 701.25 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to Obtain a Fellowship.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the PDF program.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice will be part of the public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The GCLO needs the information collected in the PDF application to determine who will receive a Professional Development Fellowship. The information is provided to selection committees that use a set of criteria to score the applications. Respondents are spouses and partners of direct-hire U.S. government employees from all agencies serving overseas under Chief of Mission who want to develop, maintain, and/or refresh their professional skills while overseas. The information is sought pursuant to 22 U.S.C 2651a—Organization of Department of State, 22 U.S.C 3921—Management of the Foreign Service, 22 U.S.C. 4026(b) Establishment of Family Liaison Office.

Methodology

Applicants will email the completed application to GCLO's PDF program manager.

Gabrielle Hampson,

Director, Global Community Liaison Office, Bureau of Global Talent Management, Department of State.

[FR Doc. 2024–06217 Filed 3–22–24; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket Number: FAA–2024–0435]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Pilot Records Improvement Act of 1996/Pilot Record Database

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection involves two distinct methods of collecting. The first method of collecting uses the traditional paper/hardcopy forms which is limited in scope. The second method is more expansive and uses online web-based forms or Application Programming Interface (API) upload functionality. The information can then be shared with a potential employer to aid them in their hiring decision-making process. The information collected can be release to a hiring employer by the pilot. Disclosure of their information is not possible unless the pilot first authorizes the release. The information to be collected will be used to and/or is necessary because before allowing an individual to begin service as a pilot, and air carrier or operator shall receive and evaluate all relevant information pertaining to the individual.

DATES: Written comments should be submitted by May 24, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Federal Aviation Administration, Attn: Automation Systems Management Group, AFS–950 (PRD/PRIA), P.O. Box 25082, Oklahoma City, OK 73125–0082.

By fax: 405–954–4655.

FOR FURTHER INFORMATION CONTACT: Justin Eddleman by email at: *justin.eddleman@faa.gov; prdsupport@faa.gov;* phone: 405–954–4173.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0607.

Title: Pilot Records Improvement Act of 1996/Pilot Record Database.

Form Numbers:

FAA FORM 8060–11 AIR CARRIER AND OTHER RECORDS REQUEST (PRIA)

FAA FORM 8060–11A AIRMAN NOTICE AND RIGHT TO RECEIVE COPY—AIR CARRIER AND OTHER RECORDS (PRIA)

FAA FORM 8060–12 AUTHORIZATION FOR RELEASE OF DOT DRUG AND ALCOHOL TESTING RECORDS UNDER PRIA AND MAINTAINED UNDER TITLE 49 CODE OF FEDERAL REGULATIONS (49 CFR) PART 40

FAA FORM 8060–13 NATIONAL DRIVER REGISTER RECORDS REQUEST (PRIA)

FAA FORM 8060–14 PILOT CONSENT/REVOCATION FOR AIR CARRIER ACCESS TO PILOT RECORDS DATABASE

FAA FORM 8060–15 PILOT RECORDS DATABASE PILOT RECORDS DISPUTE SUPPLEMENTAL INFORMATION

Web Based Forms & API Upload:

#1: Drug and Alcohol records reporting
#2: Training, qualification, and proficiency records reporting
#3: Final Disciplinary Action records reporting
#4: NDR records reporting
#5: Date of Hire reporting
#6: Assignment to Duty records reporting
#7: Date of Separation reporting
#8: Employment History records reporting
#10: Pilot Consent form

Type of Review: Renewal of an information collection.

Background: The Pilot Records Improvement Act of 1996 (PRIA) as amended, was enacted to ensure that part 121, 125 and 135 air carriers and air operators adequately investigate a pilot's background before allowing that pilot to conduct commercial air carrier flights for their company. Under PRIA, a hiring employer cannot place a pilot into service until they obtain, review and approve the pilot's background and other safety-related records for the past 5 year period as specified in PRIA. The FAA information disclosed under PRIA are medical and airman certificate verifications and any closed enforcement and revocation data. The air carrier information disclosed under PRIA are those concerning pilot performance and training, disciplinary and removal from service, and drug and alcohol testing records. Records from the Department of Motor Vehicles of any particular State would include records of drug and alcohol convictions. Other records collections such as financial statements, fingerprints and failed check rides may be requested and received but they are outside the purview and scope of PRIA and would be requested using other vehicles than the PRIA forms. PRIA request forms can be received by fax or mail; however, the most common method is by email attachment, one pilot/applicant per one form. As set forth in 49 U.S.C. 44703(i)(1), under the Pilot Records Database (PRD), a hiring employer cannot place a pilot into service until the employer has evaluate all the relevant information in the PRD. PRD relies on a digital and centralized repository containing the pilot information. It also expands on the types of operators that must participate in the sharing of information than that of PRIA. The following official FAA-Records about a pilot are collected; airman certificates and associated ratings, accident and incident information, enforcement information, and drug and alcohol testing. There is also industry collected information about pilots which include; training, qualification, and proficiency Records, final disciplinary records, employment history, and the Motor Vehicle Driving record evaluation date. The PRD facilitates the sharing of pilot records among pilot employers in a clearinghouse managed by the Federal Aviation Administration (FAA). In accordance with part 111, all 14 CFR part 121, 125, 135 certificate holders, 91K operators, air tour operators, and other specific entities operating under part 91 are required to access the PRD to either evaluate a pilot candidate prior to making a hiring decision or to report records. The PRD contains employer and FAA records on an individual's performance as a pilot for the life of the individual. Records contained within the database would only be permitted to be used as a hiring aid in an operator's decision-making process for pilot employment. The pilot has full control of who they release their PRD information to and for how long. Disclosure of their information can only be initiated by the pilot.

Respondents: Regarding PRIA, the PRIA representative at each part 121, 125 and 135 air carrier is responsible for completing, forwarding, receiving and providing the air carrier with the completed PRIA report so the air carrier can make a more informed hiring decision concerning each pilot/applicant. One complete PRIA package is required for every pilot/applicant. As of December 7, 2021, the FAA no longer processes PRIA requests via Form 8060–10, as this function became available through PRD. Prior to December 7, 2021, the FAA processes approximately 24,120 PRIA packages per year from respondents.

Regarding PRD, the PRD representative at each certificate holder operating under part 121, 125, 135, 91K operators, air tour operators, and other specific entities operating under part 91 is responsible for completing and submitting the PRD employer records to PRD, for each pilot, through the Web based forms or API. Pilots who hold commercial, airline transport, or remote pilot certificates can access PRD and complete web-based forms concerning Employment History records reporting (#8) and Pilot Consent form (#10). If the pilot is unable to access the PRD, the pilot can submit hardcopies of FAA Forms 8060–14 and 8060–15 to *prdsupport@faa.gov* for processing by the FAA on their behalf. The FAA processes approximately 1,853 FAA forms 8060–14 and five FAA forms 8060–15 per year from respondents.

Frequency: On occasion.

Estimated Average Burden per Response: 98 hours.

Estimated Total Annual Burden: 2,086,380 hours.

Issued in Oklahoma City, OK on March 19, 2024.

Justin Eddleman,

PRD/PRIA Program Manager, Safety Analysis & Promotion Division, Automation Systems Management Group, AFS–950.

[FR Doc. 2024–06149 Filed 3–22–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0104]

Central Florida Rail Corridor's Request To Amend Its Positive Train Control System Comment Extension Notice

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of extension for request for comments.

SUMMARY: On February 15, 2024, the Central Florida Rail Corridor (CFRC) submitted a request for amendment (RFA) to its FRA-certified positive train control (PTC) system in order to temporarily disable its PTC system between Milepost (MP) 749.60 and MP 755.4 to perform necessary maintenance and improve an existing a crossing. FRA published a notice inviting public comment on CFRC's request to disable its PTC system to perform necessary maintenance, with the initial comment period closing on March 18, 2024. This document provides the public with notice that FRA is extending the comment period on CFRC's request from March 18, 2024, to April 1, 2024, as CFRC's request was uploaded to the docket late due to a technical error, and was not available for review during the full initial comment period.

DATES: The comment period stated in the notice published in the **Federal Register** at 89 FR 14127 (February 26, 2024) is extended until April 1, 2024. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2011–0104. For convenience, all active PTC documents are hyperlinked on FRA's website at *https://railroads.dot.gov/reserch-development/program-areas/train-control/ptc/railroads-ptc-dockets.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTC Safety Plan (PTCSP), a host railroad must submit, and obtain FRA's approval of, an RFA to its PTC system or PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal or train control system. Accordingly, this notice informs the public that, on February 15, 2024, CFRC submitted an RFA to its PTCSP for its Interoperable Electronic Train Management System (I–ETMS), which seeks FRA's approval for a temporary outage to conduct planned track maintenance. That RFA is available in Docket No. FRA–2011–0104.

Interested parties are invited to comment on CFRC's RFA by submitting written comments or data. During FRA's review of CFRC's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, FRA encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2024–06191 Filed 3–22–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No.: PHMSA–2022–0085]

Pipeline Safety: Information Collection Activities: Mitigation of Ruptures on Onshore Gas Transmission and Gathering, Hazardous Liquid, and Carbon Dioxide Pipeline Segments Using Rupture-Mitigation Valves or Alternative Equivalent Technologies and Blending of Hydrogen Gas and Natural Gas Within Gas Pipelines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites public comments on its intent to request the Office of Management and Budget's (OMB) approval of changes to existing information collections under OMB control numbers 2137–0627 (National Registry of Pipeline and LNG Operators), 2137–0635 (Pipeline Operators), 2137–0635 (Incident Reports for Natural Gas Pipeline Operators), 2137–0629 (Annual Report for Gas Distribution Operators), 2137–0522 (Annual Reports for Gas Pipeline Operators), 2137–0614 (Hazardous Liquid Pipeline Operator Annual Reports), and 2137–0596 (National Pipeline Mapping Program). The proposed information collection changes would provide data necessary to demonstrate an alternative approach to the implementation of Recommendation P–11–11 made by the National Transportation Safety Board (NTSB) and allow PHMSA to identify trends related to the blending of hydrogen gas and natural gas within gas pipelines from operator-submitted data.

DATES: Interested persons are invited to submit comments on or before May 24, 2024.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov Website: https://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, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: U.S. Department of Transportation Docket Management System, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9:00 a.m. and 5:00 p.m., ET, Monday through Friday, except federal holidays.

Instructions: Please include the docket number, PHMSA–2022–0085, at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard with the following statement: ''Comments on: PHMSA–2022–0085.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Internet users may submit comments at *https://www.regulations.gov.* Please note that, due to delays in the delivery of U.S. mail to federal offices in Washington, DC, we recommend submitting comments to the docket via the internet, fax, or professional courier to ensure their timely receipt at the DOT.

Note: Comments are posted without changes or edits to *https://www.regulations.gov,* including any personal information provided. There is also a privacy statement published on *https://www.regulations.gov,* which is also provided below.

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

Docket: For access to the docket or to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket. Alternatively, you may review the documents in person at the physical address listed above for mail and hand delivery.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA; 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 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 a second copy of the original document with the CBI deleted, along with the original document; 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 FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Angela Hill, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, PHP–30, 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: Angela Hill by phone at 202–366–1246 or by email at *Angela.Hill@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Mitigation of Ruptures on Onshore Gas Transmission and Gathering, Hazardous Liquid, and Carbon Dioxide Pipeline Segments Using Rupture-Mitigation Valves or Alternative Equivalent Technologies

On September 9, 2010, at about 6:11 p.m. PT, a 30-inch diameter segment of an intrastate natural gas transmission pipeline known as Line 132, owned and operated by the Pacific Gas and Electric Company (PG&E), ruptured in a residential area in San Bruno, California. PG&E's dispatch center first received notification of an explosion at 6:18 p.m. by an off-duty employee. Additional notifications were received in the next several minutes from other employees observing the accident fire or observing pressure drops in PG&E's supervisory control and data acquisition (SCADA) center. Shortly after 6:50 p.m., while processing available information about the ongoing event, PG&E personnel recognized the rupture was occurring on Line 132. PG&E subsequently began isolating the pipeline segment affected by the rupture by closing remotely operated valves at 7:29 p.m., and technicians manually closed two additional valves at 7:30 p.m. and 7:46 p.m., respectively, fully isolating the affected segment. It took a total of 95 minutes from the start of the rupture for PG&E to stop the flow of gas in the affected segment and isolate the

rupture site, and 91 minutes from the start of the rupture for the intensity of the fire to decrease enough so that firefighters could approach the rupture site and begin containment efforts.

In its investigation report on the incident,[1] the NTSB concluded the 95 minutes that PG&E took to stop the flow of gas by isolating the rupture site was excessive. If the gas had been shut off earlier, thereby removing fuel flow, the fire would likely have been smaller and resulted in less damage. Also, buildings that would have otherwise provided protection to residents in a shorter-duration fire were compromised because of the elevated heat. In addition to exposing residents and their property to increased risk, the prolonged fire was also detrimental to emergency responders, who were put at increased risk by having to be close to the fire for a longer time and were not available to respond to other potential emergencies while they were waiting for the fire to subside. This delay,—which contributed to the seriousness and extent of property damage and increased risk to residents and emergency responders,—in combination with the failure of the SCADA center to expedite shutdown of the remote valves, contributed to the severity of the incident.

On Sunday, July 25, 2010, a segment of a 30-inch-diameter pipeline, owned and operated by Enbridge Incorporated (Enbridge), ruptured in a wetland in Marshall, Michigan, releasing an estimated 843,444 gallons of crude oil. The NTSB also investigated that accident [2] and identified similar rupture identification and response inadequacies as noted in its investigation of the PG&E incident at San Bruno.

Following these ruptures, the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 [3] was enacted, containing several pipeline safety mandates related to the PG&E and Enbridge ruptures. In particular, the legislation required PHMSA to issue regulations requiring the use of automatic shut-off valves or remote-control valves, or equivalent technology, on newly constructed or entirely replaced gas transmission and hazardous liquid pipeline facilities.[4]

Following the PG&E incident, the NTSB recommended, in its Recommendation P–11–11, that PHMSA amend § 192.935(c) to directly require that automatic shut-off valves or remote-control valves [5] in high consequence areas and in class 3 and 4 locations be installed and spaced at intervals that consider the factors listed in that regulation. In response to that NTSB recommendation, and in consideration of other mandates, recommendations, and comments, PHMSA issued regulations in the final rule titled ''Requirement of Valve Installation and Minimum Rupture Detection Standards'' (Valve Rule).[6]

PHMSA collects information from pipeline operators on annual reports, which includes information such as total pipeline mileage, types of facilities, commodities transported, miles by material, and installation dates. These annual reports are widely used by safety researchers, government agencies, industry professionals, and PHMSA personnel for, among other things, inspection planning and future rulemaking. PHMSA's annual report forms do not currently collect information that could measure the effectiveness of the Valve Rule and provide the NTSB the necessary information as part of an alternative approach to close Recommendation P–11–11.

Accordingly, PHMSA is proposing to collect data to determine the current utilization of RMVs and measure the usage of RMVs because of the requirements in the Valve Rule and industry safety initiatives. Specifically, PHMSA proposes to modify the annual report forms listed below for gas transmission, gas gathering, hazardous liquid, and carbon dioxide pipelines, and the associated instructions, to collect the number of miles of onshore gas transmission, gas gathering, hazardous liquid, and carbon dioxide pipelines that are located between RMVs or alternative equivalent technologies. This mileage would be further categorized by the pipeline outside diameter and location relative to HCAs and class locations, as applicable. PHMSA recognizes that the Valve Rule, through the subsequent amendments by 88 FR 50056, does not apply to gas gathering lines or hazardous liquid gathering lines, but is asking operators to report the miles of onshore Type A and Type C gas gathering lines and onshore hazardous liquid gathering lines (excluding regulated rural and reporting-regulated gathering lines) that would be within a shut-off segment, as defined by §§ 192.634 and 195.418, respectively, if those definitions applied. The forms PHMSA is proposing to modify include:

- Form PHMSA F 7100.2–1 Annual Report for Calendar Year 20__ Natural and Other Gas Transmission and Gathering Pipeline Systems
- Form PHMSA F 7000–1.1 Annual Report for Calendar Year 20__ Hazardous Liquid and Carbon Dioxide Pipeline Systems

PHMSA will provide the collected information to the NTSB to illustrate the current utilization of RMVs; measure the implementation of the Valve Rule; and support closure of Recommendation P–11–11. PHMSA anticipates that the collection of this pipeline mileage information would also allow the Agency to identify the proactive approach taken by industry, in advance of the Valve Rule, to install RMVs and reduce the consequences of pipeline releases; measure, over time, the effectiveness of the Valve Rule; and identify trends related to pipeline mileage within shutoff segments to inform future rulemakings.

B. Blending Hydrogen Gas Into Natural Gas Pipelines

Hydrogen gas and natural gas (and blends of the same) are, pursuant to § 192.3, subject to PHMSA's part 192 regulations governing gas pipelines. Hydrogen gas is an energy carrier that could play an important role in reducing emissions associated with difficult-to-decarbonize sectors, including peaking and load-following electricity and industrial heating. Blending hydrogen gas into natural gas pipelines has been proposed as an approach for achieving near-term

[1] NTSB, Accident Report PAR–11/01, ''Natural Gas Transmission Pipeline Rupture and Fire, San Bruno, California, September 9, 2010'' (Aug. 30, 2011), *https://www.ntsb.gov/investigations/AccidentReports/Reports/PAR1101.pdf.*

[2] NTSB, Accident Report PAR–12/01, ''Hazardous Liquid Pipeline Rupture and Release, Marshall, Michigan, July 25, 2010'' (Aug. 10, 2012), *https://www.ntsb.gov/investigations/AccidentReports/Reports/PAR1201.pdf.*

[3] 2011 Pipeline Safety Act; Public Law 112–90.

[4] 49 U.S.C. 60102(n). (This statutory mandate was subsequently revised, establishing a new deadline for PHMSA to issue a final rule. *See* 49 U.S.C. 60102 note.)

[5] 49 CFR 192.3: Rupture-mitigation valve (RMV) means an automatic shut-off valve (ASV) or a remote-control valve (RCV) that a pipeline operator uses to minimize the volume of gas released from the pipeline and to mitigate the consequences of a rupture.

[6] 87 FR 20940 (Apr. 8, 2022) (subsequently amended by 88 FR 50056 (Aug. 1, 2023)). In developing the Valve Rule, PHMSA considered NTSB safety recommendations following the PG&E incident; GAO recommendations on the ability of operators to respond to commodity releases in high-consequence areas (HCA); technical reports commissioned by PHMSA on valves and leak detection; comments received on related topics through advance notices of proposed rulemakings (ANPRM) and the notice of proposed rulemaking (NPRM) published in February 2020; and feedback from members of the public, environmental advocacy organizations, state pipeline safety regulators, and industry representatives during Gas Pipeline Advisory Committee and Liquid Pipeline Advisory Committee meetings. *See* 87 FR 20941.

emissions reductions; however, numerous challenges and uncertainties complicate this approach to natural gas decarbonization.[7] PHMSA is aware of proposed demonstration projects aimed to address technical barriers to blending hydrogen gas into natural gas pipelines.[8] PHMSA is also aware of certain transmission and distribution pipeline operators who have historically transported blended natural gas and hydrogen gas product streams, and other operators who are beginning to consider the practice of blending natural gas with hydrogen gas in existing gas pipelines.[9] [10] [11] PHMSA anticipates that natural gas and hydrogen gas blending could become a widespread, long-term, and integral practice to meet energy and emissions reduction needs in the U.S. PHMSA recognizes that information gaps must be resolved to demonstrate the integrity of existing gas pipeline systems to transport blends of natural gas and hydrogen gas (even at lower concentrations of hydrogen gas within the blend). However, until further research is performed, PHMSA expects operators to take a measured and cautious approach, and to account for risks to pipeline integrity, public safety, and environmental protection in the performance of the requirements of part 192.

PHMSA collects construction, operation, and incident data for pipelines transporting hydrogen gas and natural gas separately in its operator identification (OPID) assignment request, national registry notification, and annual and incident reports.[12] These reports do not currently include a commodity selection for natural gas and hydrogen gas blends.

PHMSA proposes to modify the forms listed below, and the associated instructions, to allow operators of gas pipelines transporting blended natural gas and hydrogen gas to select one of three new commodity values corresponding to various percentages of hydrogen gas by volume. PHMSA proposes adding three commodity values with the following percentage ranges of hydrogen: (1) greater than zero percent but less than or equal to five percent; (2) greater than five percent but less than 20 percent; and (3) greater than or equal to 20 percent.[13] The forms that PHMSA is proposing to modify include:

- Form PHMSA F 1000.1 OPID Assignment Request
- Form PHMSA F 1000.2 National Registry Notification
- Form PHMSA F 7100.1–1 Annual Report for Calendar Year 20__ Gas Distribution System
- Form PHMSA F 7100.2–1 Annual Report for Calendar Year 20__ Natural and Other Gas Transmission and Gathering Pipeline Systems
- Form PHMSA F 7100.1 Incident Report—Gas Distribution System
- Form PHMSA F 7100.2 Incident Report—Gas Transmission, Gas Gathering, and Underground Natural Gas Storage Facilities

PHMSA anticipates that the collection of these additional commodities and the resulting separation of associated construction, operation, and incident data will allow the Agency to identify trends relating to the transportation of natural gas and hydrogen gas blends in gas pipelines to inform future rulemakings. As discussed in Section II below, PHMSA expects that operators who decide to transport blended natural gas and hydrogen gas in only part of their system would see incremental cost increases in the form of additional annual reporting requirements. PHMSA expects no additional annual reporting burden for operators who decide to transport blended natural gas and hydrogen gas in their entire system. PHMSA also expects no additional burden for national registry notifications and incident reports.

As part of this information collection, PHMSA would amend the National Pipeline Mapping System (NPMS) to include gas transmission commodity selections corresponding to natural gas and hydrogen gas blends with no additional burden.

II. Summary of Impacted Collection

Code of Federal Regulations Title 5, Section 1320.8(d), requires PHMSA to provide interested members of the public and affected entities an opportunity to comment on information collection and recordkeeping requests. This notice identifies recurring annual information collections that PHMSA will submit to OMB for approval.

The following information is provided for these information collections: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection.

PHMSA requests comments on the following information:

1. *Title:* National Registry of Pipeline and LNG Operators.

OMB Control Number: 2137–0627.

Current Expiration Date: 3/31/2025.

Type of Request: Revision of information collection.

Abstract: The National Registry of Pipeline and LNG Operators serves as the storehouse for the reporting requirements for an operator regulated or subject to reporting requirements under 49 CFR parts 192, 193, or 195. This mandatory information collection requires jurisdictional pipeline operators to submit required data to the National Registry of Pipeline and LNG Operators and notify PHMSA when they experience significant asset changes, including new construction, that affect PHMSA's ability to accurately monitor and assess pipeline safety performance. Certain types of changes to, or within, an operator's facilities or pipeline network represent potential safety-altering activities for which PHMSA may need to inspect, investigate, or otherwise oversee to ensure that any public safety concerns are adequately and proactively addressed. The forms for assigning and maintaining information are the OPID Assignment Request Form (PHMSA F 1000.1) and National Registry Notification Form (PHMSA F 1000.2).[14] The purpose of

[7] Topolski et al, ''Hydrogen Blending into Natural Gas Pipeline Infrastructure: Review of the State of Technology,'' National Renewable Energy Laboratory, (October 2022); NREL/TP5400–81704. *https://www.nrel.gov/docs/fy23osti/81704.pdf.*

[8] U.S. Department of Energy, ''HyBlend: Opportunities for Hydrogen Blending in Natural Gas Pipelines,'' (December 2022). *https://www.energy.gov/sites/default/files/2022-12/hyblend-tech-summary-120722.pdf.*

[9] Congressional Research Service, ''Pipeline Transportation of Hydrogen: Regulation, Research, and Policy,'' (March 2, 2021). *https://crsreports.congress.gov/product/pdf/R/R46700.* More than a century ago, domestic pipelines commonly shipped hydrogen (blended with methane and other gases), but the advent of natural gas production from North American reserves in the 1940s generally ended this practice as the new natural gas supplies replaced hydrogen and hydrogen blends. Today, nearly all U.S. pipeline shipment of hydrogen is in dedicated hydrogen infrastructure, although there are proposals to ship hydrogen-methane blends once again in U.S. natural gas pipelines as one aspect of a national energy strategy.

[10] Southern California Gas Company, San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southwest Gas Corporation, Joint Application Regarding Hydrogen-Related Additions or Revisions to the Standard Renewable Gas Interconnection Tariff, Before the Public Utilities Commission of the State of California, November 20, 2020, *https://www.socalgas.com/sites/default/files/2020-11/Utilities_Joint_Application_Prelim_H2_Injection_Standard_11-20-20.pdf.*

[11] Clean Energy Group, ''Hydrogen Projects in the US,'' (Last accessed February 15, 2024). *https://www.cleanegroup.org/initiatives/hydrogen/projects-in-the-us/.*

[12] Operator Identification Number. (*See* § 191.22)

[13] Zhongquan Zhou and Daniel Ersoy, ''Review Studies of Hydrogen Use in Natural Gas Distribution Systems,'' Gas Technology Institute, prepared for National Renewable Energy Laboratory, (December 16, 2010), p. 15. (''If less than 20% hydrogen is introduced into distribution system, the overall risk is not significant.'')

[14] Operator Identification Number. (*See* § 191.22.)

this information collection is to maintain an accurate assessment of the nation's pipeline infrastructure, and to keep abreast of conditions that could potentially compromise the safety and economic viability of the U.S. pipeline system. PHMSA proposes to revise forms PHMSA F 1000.1 and PHMSA F 1000.2 to allow operators to select, as a commodity, a natural gas and hydrogen gas blend. PHMSA does not expect the burden on operators to increase because of this change.

Affected Public: Pipeline Operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 744.

Total Annual Burden Hours: 744.

Frequency of Collection: On Occasion.

2. *Title:* Incident Reports for Natural Gas Pipeline Operators.

OMB Control Number: 2137–0635.

Current Expiration Date: 10/31/2024.

Type of Request: Revision of an information collection.

Abstract: Operators of natural gas pipelines and liquefied natural gas (LNG) facilities are required to report incidents, on occasion, to PHMSA per the requirements in 49 CFR part 191. This mandatory information collection covers the collection of incident report data from natural and other gas pipeline operators. This information is an essential part of PHMSA's overall effort to minimize natural gas transmission, gathering, and distribution pipeline failures. The reports contained within this information collection support the DOT's strategic goal of safety. PHMSA proposes to revise forms PHMSA F 7100.1 and PHMSA F 7100.2 to collect information on the percentage of hydrogen gas by volume released during a reportable incident from a gas pipeline transporting blended natural gas and hydrogen gas. PHMSA does not expect the burden on operators for incident reporting to increase because of this change.

Affected Public: Natural and Other Gas Pipeline Operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 999.

Total Annual Burden Hours: 4,456.

Frequency of Collection: On Occasion.

3. *Title:* Annual Report for Gas Distribution Operators.

OMB Control Number: 2137–0629.

Current Expiration Date: 5/31/2024.

Type of Request: Revision of an information collection.

Abstract: This mandatory information collection covers the collection of annual report data from gas distribution pipeline operators. Operators of gas distribution pipeline systems are required to submit annual report data to the Office of Pipeline Safety in accordance with the regulations stipulated in 49 CFR part 191 by way of form PHMSA F 7100.1–1. The form is to be submitted once for each calendar year. The annual report form collects data about the pipe material, size, and age. The form also collects data on leaks from these systems as well as excavation damages. PHMSA uses the information to track the extent of gas distribution systems and normalize incident and leak rates. PHMSA proposes to revise form PHMSA F 7100.1–1 to collect information on the percentage of hydrogen gas by volume transported in a blend of natural gas and hydrogen gas. PHMSA currently estimates that gas distribution operators spend 20 hours annually compiling and submitting annual report data. PHMSA considers hydrogen blended gas a separate commodity and, as a result, may require gas distribution operators to submit a separate annual report should they decide to distribute blended natural gas and hydrogen gas only in a portion of their system. This would result in additional reporting burdens for those operators. PHMSA is not aware of any comprehensive data currently available that would allow the Agency to quantify the number of gas distribution pipeline operators that might distribute blended natural gas and hydrogen gas. PHMSA conservatively estimates that 13 gas distribution pipeline operators would be required to submit an additional annual report for each calendar year affected by this notice. Accordingly, PHMSA expects the burden on gas distribution pipeline operators to submit annual report data to increase by 13 responses and 260 hours because of this change.

Affected Public: Gas Distribution Pipeline Operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 1,459.

Total Annual Burden Hours: 29,180.

Frequency of Collection: Annual.

4. *Title:* Annual Reports for Gas Pipeline Operators.

OMB Control Number: 2137–0522.

Current Expiration Date: 3/31/2026.

Type of Request: Revision of an information collection.

Abstract: This mandatory information collection covers the collection of annual and incident report data from gas pipeline operators. PHMSA currently estimates that 1,810 natural and other gas pipeline operators spend an average of 54 hours submitting annual report data to PHMSA each year. PHMSA is proposing to revise form PHMSA F 7100.2–1 to collect data on how many miles of pipeline segments have RMVs or alternative equivalent technology to mitigate the consequences of a potential rupture. PHMSA believes that operators currently have this information available within their integrity management plans but acknowledges it may take operators some time to compile the data needed to comply with this information collection request. As such, PHMSA proposes to add one hour to the approved burden for form PHMSA F 7100.2–1 to account for the proposed changes related to rupture mitigation valves. This will bring the burden for completing the annual report up to 55 hours per operator.

PHMSA also proposes to revise form PHMSA F 7100.2–1 to collect information on the percentage of hydrogen gas by volume transported in a blend of natural gas and hydrogen gas. PHMSA expects that the burden on operators for reporting blended natural gas and hydrogen gas would result in incremental cost increases for operators who decide to transport blended natural gas and hydrogen gas in the form of an additional annual report for the operators engaging in such transportation. PHMSA is not aware of comprehensive data that is currently available and would allow the Agency to quantify the number of pipeline operators who might transport blended natural gas and hydrogen gas. PHMSA conservatively estimates that seven gas pipeline operators would be required to submit an additional annual report for each calendar year affected by this notice. Accordingly, PHMSA expects the burden on operators to submit annual report data to increase by seven responses and 385 hours because of this change.

Affected Public: Natural and Other Gas Pipeline Operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 2,452.

Total Annual Burden Hours: 106,791.

Frequency of Collection: Annual.

5. *Title:* Hazardous Liquid Pipeline Operator Annual Reports.

OMB Control Number: 2137–0614.

Current Expiration Date: 03/31/2026.

Type of Request: Revision of an information collection.

Abstract: Owners and operators of hazardous liquid pipelines are required to provide PHMSA with safety-related documentation relative to the annual operation of their pipeline. PHMSA uses the provided information to compile a national pipeline inventory, identify safety problems, and target inspections. PHMSA currently estimates that 475 operators of hazardous liquid and/or carbon dioxide pipeline systems spend an average of 26 hours annually

submitting annual report data to PHMSA via form PHMSA F7000–1.1, the Annual Report for Hazardous Liquid and Carbon Dioxide Pipeline Systems. PHMSA is proposing to revise form PHMSA F7000–1.1. to collect data on how many miles of pipeline segments have RMVs or alternative equivalent technology to mitigate the consequences of a potential rupture. PHMSA believes that operators currently have this information available within their integrity management plans but acknowledges it may take operators some time to compile the data needed to comply with this information collection request.

As such, PHMSA proposes to add one hour to the approved burden for form PHMSA F7000–1.1 to account for the proposed changes. This will bring the total burden for completing the annual report to 27 hours per operator for an overall burden of 12,825 hours across all hazardous liquid and carbon dioxide pipeline operators.

Affected Public: Owners and operators of hazardous liquid and carbon dioxide pipelines.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 950.

Total Annual Burden Hours: 12,825.

Frequency of Collection: Annual.

6. *Title:* National Pipeline Mapping Program.

OMB Control Number: 2137–0596.

Current Expiration Date: 03/31/2026.

Type of Request: Revision of an information collection.

Abstract: The Pipeline Safety Improvement Act of 2002 (Pub. L. 107–355), 49 U.S.C. 60132, ''National Pipeline Mapping System,'' requires operators to submit geospatial data appropriate for use in the National Pipeline Mapping System or data in a format that can be readily converted to geospatial data; the name and address of the person with primary operational control (to be known as its operator); and a means for a member of the public to contact the operator for additional information about the pipeline facilities it operates. PHMSA proposes to amend the NPMS to include gas transmission commodity selections for natural gas and hydrogen gas blends. PHMSA estimates that no additional burden will be incurred by operators as a result of this change.

Affected Public: Owners and operators of gas transmission pipelines and hazardous liquid and carbon dioxide pipelines.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 1,346.

Total Annual Burden Hours: 162,208.

Frequency of Collection: Annual.

Comments are invited on:

(a) The need for this information collection for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(b) The accuracy of the Agency's estimate of the burden 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.

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

(e) Additional information that would be appropriate to collect to inform the reduction of risk to people, property, and the environment due to excavation damages.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on March 19, 2024, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2024–06155 Filed 3–22–24; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On March 20, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

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Individuals

1. GAMBASHIDZE, Ilya Andreevich (Cyrillic: ГАМБАШИДЗЕ, Илья Андреевич) (a.k.a. GAMBACHIDZE, Ilya Andreievitch (Cyrillic: ГАМБАЧИДЗЕ, Илья Андреевич)), 17, Bld 3, Kuusinena Str, Apt 70, Moscow 125252, Russia; DOB 07 May 1977; POB Kyiv, Ukraine; nationality Russia; citizen Russia; Gender Male; Passport 756410352 (Russia); National ID No. 4522912438 (Russia); Tax ID No. 771401746465 (Russia); Registration Number 318774600703371 (Russia) (individual) [RUSSIA-EO14024] (Linked To: SOCIAL DESIGN AGENCY).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of SOCIAL DESIGN AGENCY, an entity whose property and interest in property is blocked pursuant to E.O. 14024.

2. TUPIKIN, Nikolai Aleksandrovich (Cyrillic: ТУПИКИН, Николай Александрович) (a.k.a. TUPIKIN, Nikolay), Raspletina, Dom 17, Korpus 2, Kv. 7, Moscow 123060, Russia; DOB 06 Jun 1977; POB Moscow, Russia; nationality Russia; citizen Russia; Gender Male; Passport 727760853 (Russia); National ID No. 4503851519 (Russia); Registration ID 319774600345330 (Russia); Tax ID No. 773402066160 (Russia) (individual) [RUSSIA-EO14024] (Linked To: COMPANY GROUP STRUCTURA LLC).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of COMPANY GROUP STRUCTURA LLC, an entity whose property and interest in property is blocked pursuant to E.O. 14024.

Entities

1. COMPANY GROUP STRUCTURA LLC (a.k.a. GK STRUKTURA (Cyrillic: ГК СТРУКТУРА); a.k.a. GRUPPA KOMPANII STRUKTURA (Cyrillic: ГРУППА КОМПАНИЙ СТРУКТУРА); a.k.a. STRUCTURA NATIONAL TECHNOLOGIES), Per. Bolshoi Kislovskii, d. 1, str. 2, Pomeshch/Kom I/42, Moscow 125009, Russia; Website structura.pro; Organization Established Date 12 Dec 2017; Organization Type: Other information technology and computer service activities; Tax ID No. 7703438908 (Russia); Registration Number 5177746315588 (Russia) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

2. SOCIAL DESIGN AGENCY (Cyrillic: АГЕНТСВО СОЦИАЛЬНОГО ПРОЕКТИРОВАНИЯ) (a.k.a. AGENTSTVO SOTSIALNOGO PROEKTIROVANIYA; a.k.a. SOCIAL PLANNING AGENCY), Solviny Pr, 18A, Fl 2, Pom I K 9A O 1, Moscow 117593, Russia; Pr-kt novoyasenevskii, d. 32, k. 1, pomeshch 1/1, Moscow 117463, Russia; Bolshoy Kislovsky, per 1, building 2, Moscow, Russia; Bol'shaya Nikiskaya Ulitsa, 12cl, Moscow 125009, Russia; Website sp-agency.ru; Organization Established Date 05 Dec 2017; Organization Type: Other information technology and computer service activities; Tax ID No. 7728390408 (Russia); Registration Number 5177746289232 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

Dated: March 20, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–06235 Filed 3–22–24; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Enforcement, Compliance and Analysis, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On March 20, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

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Individuals

1. INANLU, Mitra (Arabic: ميترا اينانلو) (a.k.a. INANLOO, Mitra), Iran; DOB 23 Sep 1977; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Female; National ID No. 0059643390 (Iran) (individual) [NPWMD] [IFSR] (Linked To: MANDEGAR BASPAR KIMIYA COMPANY).

   Designated pursuant to section 1(a)(iv) of Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," 70 FR 38567, 3 CFR, 2005 Comp., p. 170 ("E.O. 13382"), for acting or purporting to act for or on behalf of, directly or indirectly, MANDEGAR BASPAR KIMIYA COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

2. KANOGLU, Hidayet, Rize, Turkey; DOB 30 Jan 1973; POB Ankara, Turkey; nationality Turkey; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male (individual) [NPWMD] (Linked To: SAZEH MORAKAB CO. LTD).

   Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, SAZEH MORAKAB CO. LTD, a person whose property and interests in property are blocked pursuant to E.O. 13382.

3. SHAHMARI GHOJEH BIKLO, Rostam (Arabic: رستم شهمارى قوجه بيكلو) (a.k.a. SHAHMARI GHOJEHBIKLO, Rostam), Tehran, Iran; DOB 28 Dec 1967; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 1620885115 (Iran) (individual) [NPWMD] [IFSR] (Linked To: ATOMIC ENERGY ORGANIZATION OF IRAN).

   Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, ATOMIC ENERGY ORGANIZATION OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

4. KARIMI, Maziar (a.k.a. KARIMI, Mazyar), Koln, Germany; DOB 23 Sep 1973; nationality Iran; alt. nationality Germany; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 1755530048 (Iran) (individual) [NPWMD] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS AEROSPACE FORCE SELF SUFFICIENCY JIHAD ORGANIZATION).

   Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, ISLAMIC REVOLUTIONARY GUARD CORPS AEROSPACE FORCE SELF SUFFICIENCY JIHAD ORGANIZATION, a person whose property and interests in property are blocked pursuant to E.O. 13382.

5. GOK, Mahmut, Istanbul, Turkey; DOB 29 Apr 1976; nationality Turkey; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport U07107567 (Turkey) expires 01 Apr 2023 (individual) [NPWMD] [IFSR] (Linked To: GOKLER DIS TICARET LIMITED SIRKETI).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, GOKLER DIS TICARET LIMITED SIRKETI, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Entities

1. ALBORZ ORGANIC MATERIAL ENGINEERING COMPANY (Arabic: شرکت مهندسی مواد آلی البرز), Karaj, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 07 Oct 2014; National ID No. 14004448175 (Iran); Commercial Registry Number 27389 (Iran) [NPWMD] [IFSR] (Linked To: INANLU, Mitra).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, INANLU, Mitra, a person whose property and interests in property are blocked pursuant to E.O. 13382.

2. PISHRO MOBTAKER PEYVAND (Arabic: پیشرو مبتکر پیوند) (a.k.a. PISHRA MOBTAKER PEYVAND COMPANY; a.k.a. PISHRO MOBTAKER PEIVAND; a.k.a. "LEADING INNOVATOR LINK"), Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 21 Aug 2002; National ID No. 10102328283 (Iran); Commercial Registry Number 190858 (Iran); Chamber of Commerce Number 132255 (Iran) [NPWMD] [IFSR] (Linked To: ATOMIC ENERGY ORGANIZATION OF IRAN).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, ATOMIC ENERGY ORGANIZATION OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

3. MAZAYA ALARDH ALDHABIA LLC, Al Uqdah, Muscat, Oman; Al Buraimi P.O. Box 280/512, Oman; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 22 Jan 2019; Registration Number 1335894 (Oman) [NPWMD] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS AEROSPACE FORCE SELF SUFFICIENCY JIHAD ORGANIZATION).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, ISLAMIC REVOLUTIONARY GUARD CORPS AEROSPACE FORCE SELF SUFFICIENCY JIHAD ORGANIZATION, a person whose property and interests in property are blocked pursuant to E.O. 13382.

4. MAZIXON GMBH AND CO KG, Jesuitengasse 73, Koln 50735, Germany; Merkenicher Haupt Str. 96, Koln 50769, Germany; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 23 Jun 2020; V.A.T. Number

DE338075769 (Germany); Registration Number 50670A34770 (Germany) [NPWMD] [IFSR] (Linked To: KARIMI, Maziar).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, KARIMI, Maziar, a person whose property and interests in property are blocked pursuant to E.O. 13382.

5. MAZIXON VERWALTUNGS GMBH, Jesuitengasse 73, Koln 50735, Germany; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 28 Apr 2020; Registration Number 50670B102044 (Germany) [NPWMD] [IFSR] (Linked To: KARIMI, Maziar).

   Designated pursuant to section 1(a)(iv) of E.O. 13382 for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, KARIMI, Maziar, a person whose property and interests in property are blocked pursuant to E.O. 13382.

6. TIT ULUSLARARASI NAKLIYAT DERI TEKSTIL GIDA SANAYI VE TICARET LIMITED SIRKETI, No. 12 Ataturk Mah. Sulun Cad., Istanbul 34750, Turkey; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 13 Jan 2005; Chamber of Commerce Number 490835 (Turkey); Registration Number 543253 (Turkey) [NPWMD] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS AEROSPACE FORCE SELF SUFFICIENCY JIHAD ORGANIZATION).

   Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, ISLAMIC REVOLUTIONARY GUARD CORPS AEROSPACE FORCE SELF SUFFICIENCY JIHAD ORGANIZATION, a person whose property and interests in property are blocked pursuant to E.O. 13382.

7. DM GOLD KIYMETLI MADENLER ANONIM SIRKETI, Molla Fenari Mah. Iskender, Bogazi SK. No: 3/322, Fatih, Istanbul, Turkey; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 14 Dec 2022; Chamber of Commerce Number 1422340 (Turkey); Registration Number 428703-5 (Turkey); Central Registration System Number 0302-1277-4740-0001 (Turkey) [NPWMD] [IFSR] (Linked To: GOK, Mahmut).

   Designated pursuant to section 1(a)(iv) of E.O. 13382 for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, GOK, Mahmut, a person whose property and interests in property are blocked pursuant to E.O. 13382.

8. GOKLER DIS TICARET LIMITED SIRKETI (a.k.a. GOKLER IMPORT AND EXPORT LIMITED COMPANY), Molla Fenari MH Iskender Bogazi SK., Centilmen H.N: 3/322, Fatih, Istanbul, Turkey; Sultan Selim MH Eski, Buyukdere Cad No: 61/2, Synergie Plaza, Kagithane, Istanbul, Turkey; Website www.goklergroup.com; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 05 Jul 2021; Chamber of Commerce Number 1307423 (Turkey); Registration Number 317308-5 (Turkey); Central Registration System Number 0396-1370-8340-0001 (Turkey) [NPWMD] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13382.

9. KLAS KIMYASAL URUNLER TICARET LIMITED SIRKETI, Molla Fenari Mah. Carsikapa Cad. Centilmen, Han No: 20 IC Kapi No: 96, Fatih, Istanbul, Turkey; Additional Sanctions Information - Subject to Secondary Sanctions; Registration Number 100889-8 (Turkey) [NPWMD] [IFSR] (Linked To: GOK, Mahmut).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, GOK, Mahmut, a person whose property and interests in property are blocked pursuant to E.O. 13382.

10. MAHMUT GOK SKIES PETROLEUM DIS TICARET, Esentepe MH. Keskin, Kalem SK., No: 17/2, Sisli, Istanbul, Turkey; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 29 Jan 2019; Chamber of Commerce Number 1167239 (Turkey); Registration Number 177454-5 (Turkey) [NPWMD] [IFSR] (Linked To: GOK, Mahmut).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, GOK, Mahmut, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Dated: March 20, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–06231 Filed 3–22–24; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of two persons and four vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons and these vessels are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On March 15, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person and the following vessel subject to U.S. jurisdiction are blocked under the relevant sanctions authority listed below.

Entity

1. VISHNU INC., Trust Company Complex, Ajeltake Road, Majuro, Ajeltake Island 96960, Marshall Islands; Navi Mumbai, Maharashtra, India; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 04 Mar 2021; Organization Type: Sea and coastal freight water transport; Identification Number IMO 6213660; Business Registration Number 108158 (Marshall Islands) [SDGT] (Linked To: AL–JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224), 3 CFR, 2019 Comp., p. 356., as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AL–JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Vessel

1. LADY SOFIA (3ESB9) Crude Oil Tanker Panama flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9212759; MMSI 371698000 (vessel) [SDGT] (Linked To: VISHNU INC.).

Identified pursuant to E.O. 13224, as amended, as property in which VISHNU INC., a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

Dated: March 15, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–06237 Filed 3–22–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of two entities and two vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons and vessels are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Compliance, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On March 6, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following entities and vessels are blocked under the relevant sanctions authority listed below.

Entities

1. HONGKONG UNITOP GROUP LTD, Unit 2508A, Bank of America Tower, 12, Harcourt Road, Central, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 09 Jun 2023; C.R. No. 3287498 (Hong Kong); Identification Number IMO 6428388 [SDGT] (Linked To: AL–JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224), 3 CFR, 2019 Comp., p. 356., as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AL–JAMAL (AL–JAMAL), a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. RENEEZ SHIPPING LIMITED, Trust Company Complex, Ajeltake Road, Ajeltake, Majuro 96960, Marshall Islands; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 2023; Identification Number IMO 6388435 [SDGT] (Linked To: AL–JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL–JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Vessels

1. ETERNAL FORTUNE (3E5962) Crude Oil Tanker Panama flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9230907; MMSI 352003073 (vessel) [SDGT] (Linked To: HONGKONG UNITOP GROUP LTD).

Identified pursuant to E.O. 13224, as amended, as property in which HONGKONG UNITOP GROUP LTD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

2. RENEEZ (T8A3663) Crude Oil Tanker Palau flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9232450; MMSI 511100508 (vessel) [SDGT] (Linked To: RENEEZ SHIPPING LIMITED).

Identified pursuant to E.O. 13224, as amended, as property in which RENEEZ SHIPPING LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

Dated: March 6, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–06238 Filed 3–22–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Relating to Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning adjustments to basis of stock and indebtedness to shareholders of S corporations and treatment of distributions by S corporations to shareholders.

DATES: Written comments should be received on or before May 24, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224 or by email to *pra.comments@irs.gov.* Please include OMB Number 1545–1139 in the Subject line of the message. Requests for additional information or copies of the regulations should be directed to Sara Covington, (202) 317–5744 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *sara.l.covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders.

OMB Number: 1545–1139.

Regulation Project Number: TD 9300 and TD 9428.

Abstract: This document contains final regulations relating to the passthrough of items of an S corporation to its shareholders, the adjustments to the basis of stock of the shareholders, and the treatment of distributions by an S corporation. Changes to the applicable law were made by the Subchapter S Revision Act of 1982, the Tax Reform Act of 1984, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Small Business Job Protection Act of 1996.

These regulations provide the public with guidance needed to comply with the applicable law and will affect S corporations and their shareholders.

Current Actions: There are no changes being made to this existing regulation or to the paperwork burden previously approved by OMB.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Responses: 2,250.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 450.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 19, 2024.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2024–06182 Filed 3–22–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Relating to Application for Determination of Employee Stock Ownership Plan (ESOP)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 5309, Application for Determination of Employee Stock Ownership Plan (ESOP).

DATES: Written comments should be received on or before May 24, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224 or by email to *pra.comments@irs.gov.* Please reference ''OMB Control Number 1545–0284'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, (202) 317–5744 at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Determination of Employee Stock Ownership Plan (ESOP).

OMB Number: 1545–0284.

Form Number: 5309.

Abstract: Internal Revenue Code section 404(a) allows employers an income tax deduction for contributions to their qualified deferred compensation plans. Form 5309 is used to request an IRS determination letter about whether the plan is qualified under Code section 409 or 4975(e)(7).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,655.

Estimated Time per Respondent: 10 hrs., 47 minutes.

Estimated Total Annual Burden Hours: 26,975.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 19, 2024.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2024–06180 Filed 3–22–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Importer's Records and Reports

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the

date of publication of this notice. The public is invited to submit comments on this request.

DATES: Comments should be received on or before April 24, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

Title: Importer's Records and Reports.

OMB Control Number: 1513–0064.

Type of Review: Extension without change of a currently approved collection.

Description: Pursuant to chapters 51 and 52 of the Internal Revenue Code (IRC, 26 U.S.C.) and the Federal Alcohol Administration Act (FAA Act, 27 U.S.C. 201 *et seq.*), TTB regulates, among other things, the importation of alcohol and tobacco products. Under those statutory authorities, TTB has issued regulations in 27 CFR requiring importers of alcohol and tobacco products to provide certain information regarding their identity, TTB-issued permits, the identity and amount products imported, and the taxes paid on those products or, for products released from customs custody without payment of tax, the transfer of such products to a bonded facility. TTB also uses the collected information to ensure that imported alcohol beverage labels comply with FAA Act labeling requirements. Under this information collection, importers generally submit the required information electronically to Customs and Border Protection during the import entry process, and the required information is then electronically transmitted to TTB. In addition, importers may submit letterhead applications to TTB to request variances from established regulatory provisions. The collected import data and letterhead variance information are necessary to protect the revenue and ensure that importers comply with Federal laws and regulations regarding alcohol and tobacco products or that proposed alternatives will not pose a burden to TTB in administrating its import regulations.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 10,550.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 63,300.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 21,100.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2024–06159 Filed 3–22–24; 8:45 am]

BILLING CODE 4810–31–P

FEDERAL REGISTER

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Part II

Department of Commerce

International Trade Administration

19 CFR Part 351

Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Law; Final Rule

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 240307–0075]

RIN 0625–AB23

Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: Pursuant to its authority under the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is amending its regulations to enhance, improve and strengthen its enforcement and administration of the antidumping duty (AD) and countervailing duty (CVD) laws. Specifically, Commerce is revising some of its procedures, codifying certain areas of its practice, and enhancing certain areas of its methodologies and analyses to address price and cost distortions, as well as certain countervailable subsidies, in different capacities.

DATES: These amendments are effective April 24, 2024.

FOR FURTHER INFORMATION CONTACT: Scott McBride, Associate Deputy Chief Counsel, at (202) 482–6292, Ian McInerney, Attorney, at (202) 482–2327, Hendricks Valenzuela, Attorney, at (202) 482–3558, or Ariela Garvett, Senior Advisor, at *Ariela.Garvett@trade.gov*.

SUPPLEMENTARY INFORMATION:

General Background

On May 9, 2023, Commerce proposed amendments to its existing regulations, 19 CFR part 351, to improve, strengthen and enhance its enforcement of the AD and CVD laws.[1] Relevant to this final rule are the AD/CVD statutory and regulatory provisions in general, as well as those pertaining to filing requirements, scope, circumvention, and covered merchandise inquiries, the use of new factual information, the CVD facts available hierarchy, surrogate value and CVD benchmark selections, particular market situations (PMS), and certain types of countervailable subsidies, which we summarize below.

Title VII of the Act vests Commerce with authority to administer the AD/CVD laws. In particular, section 731 of the Act directs Commerce to impose an AD order on merchandise entering the United States when it determines that a producer or exporter is selling a class or kind of foreign merchandise into the United States at less than fair value (*i.e.,* dumping), and the U.S. International Trade Commission (ITC) finds material injury or threat of material injury to that industry in the United States. Section 701 of the Act directs Commerce to impose a CVD order when it determines that a government of a country, or any public entity within the territory of a country, is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise that is imported into the United States, and when the ITC finds that material injury or threat of material injury to that industry in the United States.[2]

On September 20, 2021, Commerce revised its scope regulations (19 CFR 351.225) and issued new circumvention (19 CFR 351.226) and covered merchandise (19 CFR 351.227) regulations. *See Scope and Circumvention Final Rule,* 86 FR 52300 (September 20, 2021) (*Scope and Circumvention Final Rule*). *See also Scope and Circumvention Proposed Rule,* 85 FR 49472 (August 13, 2020) (*Scope and Circumvention Proposed Rule*). These revised and new regulations became effective November 4, 2021. On September 29, 2023, after publication of the May 2023 *Proposed Rule,* Commerce identified some technical issues in those scope, circumvention, and covered merchandise referral regulations, and amended those regulations to address those issues.[3] We have incorporated those changes into these final revised regulations.

As we explained throughout the preamble to the *Proposed Rule,* the purpose of these modifications and additions to our regulations is to improve, strengthen and enhance the enforcement and administration of the AD/CVD laws, make such enforcement and administration more efficient, and to address factors which distort costs and prices—factors that make the ''playing field'' less ''level'' for domestic interested parties and can contribute to unfair trade. In order to achieve the purpose of those regulations, Commerce may at times need to request further documentation from interested parties that clarifies the record to better understand the facts of a particular case. Other times, Commerce may need to extend the deadline to issue a determination so that its decision is fully informed and complete. To address unfair trade adequately and appropriately, Commerce may need to remove unnecessary restrictions in its regulations to address updated challenges, like the agency's withdrawal of the prohibitive transnational subsidies regulation. Commerce recognizes that in the year 2024, there are complexities and challenges in international trade which did not exist, or did not exist in the same manner or to the same degree, when previous regulations were issued. Accordingly, Commerce has determined that revisions and updates to Commerce's trade remedy regulations are warranted.

Section 516A(b)(2) of the Act provides a definition of Commerce's administrative record in AD/CVD proceedings and § 351.104(a)(1) describes in greater detail the information contained on the official record. Nonetheless, interested parties sometimes make the mistake of merely citing sources, or placing Uniform Resource Locator (URL) website information, or hyperlinks, in their submissions to Commerce, and then later presuming the information contained at the source documents is considered part of the record. This becomes a problem, for example, when parties submit their case briefs and rebuttal briefs on the record pursuant to § 351.309 and quote from, or otherwise rely on, information or data derived from the cited sources that were never submitted on the official record. Commerce therefore proposed adding clarification on this point to § 351.104(a)(1) in the *Proposed Rule.*[4] Commerce also proposed listing documents which do not need to be

[1] *See Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws,* 88 FR 29850 (May 9, 2023) (*Proposed Rule*).

[2] A countervailable subsidy is further defined under section 771(5)(B) of the Act as existing when: a government or any public entity within the territory of a country provides a financial contribution; provides any form of income or price support; or makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments; and a benefit is thereby conferred. To be countervailable, a subsidy must be specific within the meaning of section 771(5A) of the Act.

[3] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077–78 (September 29, 2023) (*APO and Service Final Rule*).

[4] *See Proposed Rule,* 88 FR 29852–53.

placed on the record, but can merely be cited, in the *Proposed Rule*.[5] We received a large number of comments on these proposals, and as we describe in greater detail below, we have revised § 351.104 to provide greater clarity on these issues.[6]

In the *Proposed Rule,* Commerce proposed language to be added to the regulations addressing scope, circumvention, and covered merchandise inquiries pertaining to filing deadlines, clarification requests, merchandise not yet imported but commercially-produced and sold, extensions of time, regulatory restrictions covering new factual information, and scope clarifications.[7] Commerce subsequently received comments from several interested parties on each of its suggestions. In response to those comments, for the reasons we explain below, Commerce has made certain modifications to its final regulations—primarily on the language pertaining to scope clarifications.

There are times when interested parties seek to file Notices of Subsequent Authority with Commerce, in which a party argues in a given segment of a proceeding that a new Federal court or Commerce decision supports, contradicts, or undermines particular arguments before the agency. However, Commerce's current regulations do not address the timing for submitting Notices of Subsequent Authority, responsive comments to a Notice of Subsequent Authority, and new factual information regarding the filing of a Notice of Subsequent Authority, nor the content requirements of a Notice of Subsequent Authority. Commerce, therefore, proposed an addition to § 351.301, at paragraph (c)(6), to provide guidance for future Notices of Subsequent Authority.[8] We received comments on that proposal, and as we describe in greater detail below, we have provided some additional language to clarify this provision in response to those comments.

Section 776(d) of the Act provides that in circumstances in which Commerce is applying adverse facts available (AFA) in selecting a program rate pursuant to sections 776(a) and (b) of the Act, it may use a countervailable subsidy rate determined for the same or similar program in a CVD proceeding involving the same country. Alternatively, if there is no same or similar program, Commerce may instead use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Commerce developed its practice of applying its current hierarchy in selecting AFA rates in CVD proceedings over many years, preceding its codification into the Act, to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in CVD proceedings in a timely manner. For purposes of these regulations, Commerce chose to codify that hierarchy in a new paragraph of § 351.308.[9] We received comments on that proposal in response to the *Proposed Rule,* and in response to those comments we have modified certain language pertaining to the CVD hierarchy in investigations.

In the *Proposed Rule,* Commerce acknowledged that both government action and government inaction can benefit producers or exporters.[10] For example, when a government issues a fee, fine, or penalty to a company, yet never collects the payment, that revenue forgone is considered a financial contribution pursuant to section 771(5)(D)(ii) of the Act. Accordingly, Commerce proposed a new regulation at § 351.529, which codifies its practice in countervailing such a subsidy.[11] In addition, Commerce proposed considering nonexistent, weak, or ineffective property (including intellectual property), human rights, labor, and environmental protections which may distort costs of production in selecting surrogate values in accordance with section 773(c)(1) of the Act in § 351.408.[12] Likewise, in determining if a product has been sold for less than adequate remuneration, Commerce proposed considering the distortive effect of those same factors on prices and costs in selecting a benchmark country price or prices, in § 351.511.[13] Finally, Commerce proposed that those factors might be the foundation of a cost-based PMS, and proposed two examples in the *Proposed Rule* to reflect those factors, to be codified in § 351.416.[14] We received numerous comments on those proposals, and although we have made no changes to the fees, fines, and penalties and less than adequate remuneration proposed regulations, and only minor edits to the surrogate value proposed regulation, we have made some changes to the PMS regulation, for the reasons provided.

On November 18, 2022, Commerce issued an advanced notice of proposed rulemaking indicating that it was considering issuing a regulation that would address the steps taken by Commerce to determine the existence of a PMS that distorts the costs of production. *See Determining the Existence of a Particular Market Situation That Distorts Costs of Production; Advanced Notice of Proposed Rulemaking,* 87 FR 69234 (November 18, 2022) (hereinafter, *PMS ANPR*). Commerce received 19 comments in response to that notice and addressed or incorporated many of those comments into its proposed regulation at § 351.416 in the *Proposed Rule.*[15] In addition, Commerce proposed regulatory provisions addressing both a sales-based PMS, as well as a cost-based PMS.[16] Its proposed regulation described information that Commerce would normally consider in determining the existence of a PMS, set forth information that Commerce would not be required to consider in every case, and explained that under certain factual situations, Commerce could determine that a cost-based PMS contributed to the existence of a sales-based PMS.[17] In addition, Commerce set forth 12 examples of circumstances that reflect a PMS that is likely to result in a distortion to costs.[18] The PMS regulation was the primary issue Commerce received comments on in response to the *Proposed Rule,* and for the reasons described below, Commerce has revised some of the language throughout § 351.416 for clarity and consistency in response to many of those comments.

In addition, Commerce proposed modifications to several of its CVD regulations, including those covering benefit (§ 351.503), loans (§ 351.505), equity (§ 351.507), debt forgiveness (§ 351.508), direct taxes (§ 351.509), export insurance (§ 351.520), and the attribution of subsidies to products in its CVD calculations (§ 351.525). We received several comments in response

[5] *Id.*

[6] Commerce also proposed a change to § 351.301(c)(4), which deals with the use of record information as well. However, the comments Commerce received were overwhelmingly opposed to such a change. Accordingly, Commerce is not making a change to the existing provision as proposed.

[7] *See Proposed Rule,* 88 FR 29853–57.

[8] *Id.,* 88 FR 29857.

[9] *Id.,* 88 FR 29858.

[10] *Id.,* 88 FR 29858–61.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.,* 88 FR 29861–67.

[16] *Id.*

[17] *Id.*

[18] *Id.*

to some of those regulation changes and have made some revisions to certain regulations in response, as set forth below.

Finally, in awareness of changes in the world economy, Commerce proposed eliminating the current regulation prohibiting the countervailing of certain transnational subsidies, § 351.527, and instead reserving it for future consideration.[19] We received numerous comments on this change to our regulations as well and have determined to make no changes from the *Proposed Rule,* for the reasons explained below.

Explanation of Modifications From the Proposed Rule to the Final Rule and Responses to Comments

In the *Proposed Rule,* Commerce invited the public to submit comments.[20] Commerce received 53 submissions from interested parties providing comments, including domestic producers, domestic industrial users, exporters, importers, foreign governments, and foreign entities. We have determined to make certain modifications to the *Proposed Rule* in response to certain issues and concerns raised in those submissions. We considered the merits of each submission and analyzed the legal and policy arguments in light of both our past practice, as well as our desire to improve, strengthen, and enhance the administration and enforcement of our AD/CVD laws.

The preamble to the *Proposed Rule* provides background, analysis, and explanation which are relevant to these regulations. With some modifications, as noted, this final rule would codify those proposed on May 9, 2023. Accordingly, to the extent that parties wish to have a greater understanding of these regulations, we encourage not only considering the preamble of these final regulations, but also a review of the analysis and explanations in the preamble to the *Proposed Rule.*

In drafting this final rule, Commerce carefully considered each of the comments received. The following sections generally contain a brief discussion of each regulatory provision(s), a summary of the comments we received, and Commerce's responses to those comments. In addition, these sections contain explanations of changes Commerce made to the *Proposed Rule,* either in response to comments or that it deemed appropriate for conforming, clarifying, or providing additional public benefit.

1. Commerce has revised § 351.104(a)(1) and added § 351.104(a)(3) through (7) to clarify the information sources that may be cited in submissions without placing them on the official record and the information sources that must be placed on the official record for Commerce to consider them.

In the *Proposed Rule,* Commerce explained that it was updating § 351.104(a), which describes in detail the information contained on the official record, to reflect Commerce's long-standing interpretation that mere citations and references (*e.g.,* hyperlinks and website URLs) do not incorporate the information located at the cited sources onto the official record. Commerce explained that this was true whether the citation is to sources such as textbooks, academic or economic studies, foreign laws, newspaper articles, or websites of foreign governments, businesses, or organizations.[21] Commerce explained that if an interested party wished to submit information on the record, it would be required to submit the actual source material in a timely manner and not merely share internet links or citations to those sources in its questionnaire responses, submissions, briefs, or rebuttal briefs.

Commerce also explained, however, that there are exceptions to this rule which it adopted over the years, and set forth those exceptions in the proposed regulations at § 351.104(a)(1). Specifically, Commerce identified the following as sources which parties could cite and rely upon, without placing the sources on the record: U.S. statutes and regulations; published U.S. legislative history; U.S. court decisions and orders; certain notices of the Secretary and ITC published in the **Federal Register**, as well as decision memoranda and reports adopted by those notices; and the agreements identified in § 351.101(a).[22]

Commerce explained that Commerce-authored ''Issues and Decision Memoranda,'' included in that list of excepted citation sources, were adopted by **Federal Register** notices and were ''not the separate calculation and analysis memoranda that Commerce frequently uses in its proceedings.'' [23] Commerce stated in the preamble that ''{c}alculation and analysis memoranda'' included ''initiation checklists, respondent selection memoranda, new subsidy allegation memoranda, and affiliation/collapsing memoranda from other proceedings or other segments of the same proceeding.'' Commerce provided that all of those documents would not be considered to be on the official record ''unless they have been placed on the record by Commerce or one of the interested parties to the proceeding.'' [24] Furthermore, Commerce explained that remand redeterminations, determinations issued pursuant to section 129 of the Uruguay Round Agreements Act (URAA) (section 129 determinations), and scope rulings must ''each be submitted on the official record of another segment or proceeding'' for Commerce to consider the contents and analysis of those determinations in that segment or proceeding.[25]

A. The revised regulation addresses documents not originating with Commerce, published in the ***Federal Register****, containing proprietary information, or not associated with an ACCESS barcode number.*

Commerce received several comments on both the proposed regulation language, as well as Commerce's description of its practice in the preamble to the *Proposed Rule.* One commenter expressed concerns with Commerce's restrictions on citations and references (*e.g.,* hyperlinks and website URLs) to documents not originating with Commerce. That commenter suggested that if documents and information (*e.g.,* academic publications) were previously placed on the record in other segments or proceedings, then parties should be able to cite those documents using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS) barcode numbers, without placing the sources anew on the record of the immediate segment. However, there is no question that factual information that has been filed by interested parties with Commerce originating outside of the agency meets the definition of factual information under § 351.102(b)(21). Furthermore, § 351.301(c) requires that new factual information be submitted on each

[19] *Id.,* 88 FR 29870.

[20] *Id.,* 88 FR 29850–51.

[21] *Id.,* 88 FR 29852–53. Commerce provided reasons that such an update to the regulation was necessary, including to avoid the time and resources it takes for Commerce to make filers remove submissions from the record and resubmit them without arguments relying on websites and URLs. Another reason for the policy is that information on websites can, and frequently does, change. At the time a weblink is placed on the record, the website might contain certain information, but later in the segment of the proceeding, that website and the information contained therein might change.

[22] *Id.,* 88 FR 29871.

[23] *Id.,* 88 FR 29853.

[24] *Id.*

[25] *Id.*

segment of the record under specific deadlines and in a certain form. Accordingly, as each segment is composed of a separate record, and information from outside of the agency should be placed on the record for consideration, we will continue to maintain that requirement as it applies to documents not originating with Commerce.

Certain commenters also expressed concerns that Commerce's list of documents that it allows to be cited without placing the information on the record was incomplete. Specifically, one party pointed out that Commerce frequently allows citations to dictionary definitions without requiring them to be separately placed on the record. Another commenter noted that parties frequently cite World Trade Organization (WTO) panel and appellate body (hereinafter the Panel and Appellate Body, respectively) decisions, as well as North American Free Trade Agreement dispute Panel decisions, without submitting those decisions on the record. That party also suggested that Commerce should allow for all Federal Government determinations and notices published in the **Federal Register** (*e.g.,* Presidential proclamations, Executive orders, and United States Trade Representative (USTR) section 301 determinations, *etc.*) to be cited without submitting them on the record. We agree with all of those comments and have modified the proposed regulation to include references to dictionary definitions, dispute settlement determinations arising out of international agreements cited in § 351.101 (§ 351.104(a)(3)(ii)), and **Federal Register** citations in general (§ 351.104(a)(5)).

In addition, one party suggested that Commerce should also include various U.S. Customs and Border Protection (CBP) rulings, including those pertaining to the Harmonized Tariff Schedule of the United States (HTSUS), on the list of documents not subject to the requirements of § 351.301. Many such rulings are on the CBP website, but it is as time consuming for Commerce as it is for the interested parties to research the rulings of other agencies not published in the **Federal Register**. Accordingly, because interested parties bear the burden to provide sources not originating with Commerce or published in the **Federal Register** on the record, we have decided not to include CBP rulings or unpublished determinations of any other agency, except for the ITC in AD and CVD proceedings, on the list of sources excluded from the filing and timing requirements of § 351.301.

In revising the proposed regulations at § 351.104(a) for this final rule, Commerce has included new paragraphs (a)(3) through (7) to further clarify which documents may be cited without submitting information on the record under § 351.301. Specifically, Commerce has revised § 351.104(a)(1) to largely reflect the current regulatory language, but adds language that states that scope, circumvention, or covered merchandise inquiries will be conducted on the record of the AD segment of a proceeding when there are companion orders.

Commerce has made no changes to § 351.104(a)(2) but has added an additional paragraph (a)(3) which specifically addresses ''filing requirements for documents not originating with the Department.'' This provision clarifies that if a document does not originate with Commerce, it must be placed on the record, with the exception of the aforementioned list of citations Commerce has historically permitted to be cited without submitting such documents on the record. Notably, the reference to Commerce memoranda and **Federal Register** notices and determinations initially referenced in the *Proposed Rule* has been removed from this listing because it is addressed elsewhere in the revised regulation. This provision explains that unless a document not originating with Commerce appears on the list of exceptions, the procedural and timing requirements of § 351.301 apply.[26] It also explains that each citation must be cited in full, and that Commerce may decline to consider information sources in its analysis or determination if those citations are not cited in full.

In the new § 351.104(a)(4), Commerce has clarified that even though parties may take proprietary, privileged, and classified information from other segments of the same proceeding and place them on the record of another segment, they cannot do so with mere citations. All documents, even those originating with Commerce, which contain business proprietary information must be placed on the official record in their entirety in accordance with the filing and timing restrictions of § 351.301.

Furthermore, new § 351.104(a)(5) clarifies that all of Commerce's **Federal Register** notifications and determinations may be cited by parties in submissions on the record without the requirement that they be submitted on the official record, as long as those notices and determinations are cited in full. If they are not cited in full, Commerce may decline to consider those notifications or determinations in its analysis. This is consistent with Commerce's longstanding practice, and the provision states clearly that the procedural and timing requirements of § 351.301 do not apply to such documents.

Finally, § 351.104(a)(7) states that public versions of documents originating with Commerce from other segments or proceedings, but which are not associated with an ACCESS barcode number for whatever reason, including those documents issued before ACCESS was established, must be filed on the record in their entirety to be considered by Commerce in its analysis. Otherwise, the record would be incomplete because other interested parties would not have access to the cited documents. Therefore, the provision explains that the procedural and timing requirements of § 351.301 apply to such documents.

B. Public versions of unpublished documents originating with Commerce and associated with an ACCESS barcode number.

The record issue which foreign exporters, foreign governments, U.S. importers, U.S. consumers, and domestic industries all agreed upon involved Commerce's treatment of unpublished Commerce determinations associated with an ACCESS barcode number. Every commenter on Commerce's treatment of the record in the *Proposed Rule* disagreed with Commerce that public versions of draft and final remand redeterminations, preliminary and final section 129 determination memoranda, and scope ruling memoranda from other segments and proceedings, that are associated with an ACCESS barcode number, should be required to be placed on the administrative record of the segment before it. Several commenters claimed that those sources do not meet the five definitions of ''factual information'' in § 351.102(b)(21), and therefore, should not be subject to the filing and timing requirements for new factual information in § 351.301.

Instead, those commenters claimed that each of these documents is an agency legal determination that should be treated like other agency legal determination documents which are unpublished but are not required to be submitted on the record of other segments or proceedings (*e.g.,* preliminary decision memoranda and final issues and decision memoranda in investigations and administrative reviews). They suggested that the mere

[26] We note that the term ''the Department'' has been applied for these provisions to clarify application to documents authored by all Commerce employees distinct from the Secretary's determinations.

fact that those particular documents were not published in the **Federal Register** does not make them any less agency legal determinations.

With respect to remand redeterminations in particular, some commenters expressed confusion with how Commerce could conclude that agency determinations issued pursuant to a Federal court proceeding and then eventually affirmed and discussed in a public Federal court holding could be treated as ''new factual information,'' incapable of citation and reference in a subsequent Commerce proceeding without submitting it on the segment of an administrative record. One commenter pointed out that all remand redeterminations are publicly available on the Public Access to Court Electronic Records (PACER) website,[27] as well as on ACCESS, and courts are free to consider documents from both sources, which the commenter stated undercut a claim that this information was ''new'' or merely ''factual.''

In addition to those documents, however, all commenters expressed concerns that the issue was much more extensive than just those three examples. They suggested that every unpublished public analysis document originating with Commerce and associated with an ACCESS barcode number should be citable without submitting the agency analysis document on the record. The commenters expressed concerns that there was no factual or legal distinction between other AD or CVD analysis memoranda and the preliminary and final issues and decision memoranda which Commerce has permitted to be cited in arguments, briefs, and rebuttal briefs without requiring them to be submitted on each record. The commenters noted that ACCESS is Commerce's filing system and Commerce analysis teams have the ability to retrieve any of the cited documents from any segment instantly, as long as they have the appropriate barcode number. Therefore, they suggested that Commerce should provide a uniform citation for all submitters in using an ACCESS barcode in their filings and apply that to all Commerce-authored documents.

To the extent that Commerce explained in the *Proposed Rule* that preliminary and final issues and decision memoranda could be cited without placement on the record because those were adopted by reference in a published **Federal Register** document, several commenters stated their belief that there was no rational legal distinction between those incorporated by a **Federal Register** document and those not incorporated by a **Federal Register** document. However, even if there was a legal distinction between the two types of memoranda based on reference in the **Federal Register**, many commenters pointed out that Commerce frequently cites many of its other analysis memoranda, such as post-preliminary memoranda and new subsidy allegation memoranda in **Federal Register** documents, yet the record information policy described in the *Proposed Rule* would not allow any of those to be cited without submitting them on the record.

Some commenters claimed that Commerce's historical treatment of citations to various public and unpublished analysis memoranda was, at times, inconsistent. In addition, they suggested that Commerce was incorrect in treating any of those analysis memoranda as new facts because just as the five definitions of ''factual information'' in § 351.102(b)(21) do not apply to remand redeterminations, section 129 determination memoranda, and scope rulings, they equally do not apply to the rest of Commerce's other public analysis memoranda. They acknowledged that each of those public memoranda analyze facts, just like the aforementioned preliminary and final issues and decision memoranda, but also recognized that the more important aspect of those memoranda was that Commerce was making an analysis of those facts and issuing policy and legal determinations based on those facts. They expressed concerns that nothing in § 351.102(b)(21) suggests that the new factual information regulations were intended to apply to Commerce analysis and calculation memoranda, and nothing in the regulation was drafted with the intent of prohibiting parties from citing past Commerce practice and relying on that practice for support of arguments before the agency. In short, several of the commenters stated that none of these memoranda are ''factual information,'' but are instead the very basis for Commerce's policies and practices, and therefore, interested parties should be able to cite them in all documents, including briefs and rebuttal briefs, without having to submit them on the record under certain timelines and certain procedures as ''new factual information,'' pursuant to § 351.301.

One commenter pointed out that in Commerce's 1997 regulations, in responding to comments on § 351.301, Commerce described the information which could be relied upon in briefs and rebuttal briefs, and stated that in ''making their arguments, parties may use factual information already on the record or may draw on information in the public realm to highlight any perceived inaccuracies . . . .'' [28] That commenter noted that all of the public memoranda issued by Commerce are in the public realm, and therefore, consistent with its previous comments, Commerce should allow all of its public analysis memoranda from other segments and proceedings to be cited without being required to submit those memoranda on the record prior to the drafting and submission of briefs and rebuttal briefs. Another commenter agreed with this idea, noting that public versions of Commerce's documents are ''just as available to the public as Commerce's issues and decision memoranda'' because anyone with an ACCESS account can obtain those documents.

Furthermore, several commenters found the approach described by Commerce in the *Proposed Rule* to agency-authored documents to be problematic with respect to post-preliminary determination and results documents. Some commenters expressed concerns that adopting a wholesale rule that prohibits parties from demonstrating in a case or rebuttal brief that Commerce has taken a position in a preliminary determination or administrative results that is inconsistent with the agency's position in another segment or proceeding would result in Commerce being unable to address inconsistencies in its approach across reviews and likely lead to increased judicial oversight. Yet another commenter explained that interested parties are confronted with a predicament when they prepare case briefs, because, at the time that they answered Commerce's questionnaires, they did not include in their submissions all relevant Commerce memoranda that would aid Commerce in its decision-making process. Therefore, because Commerce prohibits citations to other relevant Commerce public determination memoranda in briefs and rebuttal briefs, interested parties cannot provide Commerce with necessary public references that would better inform Commerce's final determinations. In addition, certain commenters argued that the alleged ''new'' rule forced interested parties to identify and submit all relevant memoranda 30 days prior to a preliminary determination or results,

[27] *See Public Access to Court Electronic Records,* available at *https://pacer.uscourts.gov.*

[28] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27295, 27332 (May 19, 1997).

even if it later became evident that it might be beneficial to the agency for the interested parties to cite to other Commerce memoranda. Such restrictions, they stated, would lead to unnecessary inconsistencies in Commerce's policies and practice.

Finally, another commenter expressed concerns that Commerce's proposal is unlawful because it would deprive interested parties of a transparent process and, for importers in particular, it would deprive them of their due process rights under the Fifth Amendment of the United States Constitution. That commenter suggested that Commerce's proposal contradicts fundamental principle of transparency in administrative law, citing *Slater Steels Corps.* v. *United States,* 279 F. Supp. 2d 1370, 1379 (CIT 2003) and *MacLean-Fogg Co.* v. *United States,* 100 F. Supp. 3d 1349, 1362 (CIT 2015) for the concept that there is a fundamental public interest in transparency in government. That commenter explained that all of the public versions of Commerce-originated documents at issue, including calculation and analysis memoranda, are publicly available, and Commerce's issues and decision memoranda frequently rely on such documents to complete the rationale underlying the agency's determinations. The commenter noted that in *Chefline Corp.* v. *United States,* 219 F. Supp. 2d 1303, 1309 (CIT 2002), the U.S. Court of International Trade (CIT) recognized that when ''credible evidence from outside the record indicates a significant error in the agency's determination,'' it would take judicial notice of that information. Thus, the commenter advocated that Commerce allow parties to cite past analysis documents in their briefs and rebuttal briefs and avoid the inevitable litigation which would otherwise follow under the approach suggested in the *Proposed Rule.*

In addition, that commenter expressed concerns that Commerce's proposed changes to its regulation would also violate an importer's due process rights under the Fifth Amendment. It stated that a fundamental requirement of due process is for parties to have the ''opportunity to be heard at a meaningful time and in a meaningful manner,'' citing *Mathews* v. *Eldridge,* 424 U.S. 319, 332 (1976) and *Young* v. *Dep't of Housing and Urban Dev.,* 706 F. 3d 1372, 1376 (Fed. Cir. 2013). Further, the commenter pointed to a U.S. Court of Appeals for the Federal Circuit's (Federal Circuit) holding which held that ''the arbitrary administration of law is subject to judicial intervention'' and that parties are ''due a fair and honest process'' (*NEC Corp* v. *United* States, 151 F. 3d 1361, 1370–71 (Fed. Cir. 1998)). The commenter explained that the relevant deadlines for the submission of factual information occur prior to Commerce's preliminary determinations, but that in many instances, Commerce's reasoning or methodological choices are not clear until it releases its preliminary determination. The commenter explained that if an interested party is prohibited from referencing a publicly available document in its case brief unless that document has already been submitted on the record or is a preliminary or final issues and decision memorandum, it is caught in an unfortunate situation because interested parties could not know if certain memoranda were relevant until after the preliminary determination or results were issued, after the deadline for submitting information on the record had passed. Thus, according to that commenter, this is a clear deprivation of those parties' due process rights to be heard in a meaningful manner.

Commerce's Response:

In response to all of the above comments, Commerce has decided to make a substantial revision to its regulations. Pursuant to § 351.104(a)(6), interested parties may, in all submissions, cite certain public preliminary and final issues and decision memoranda in the following segments, without the timing and filing restrictions of § 351.301, as long as they are fully cited and accompanied by an ACCESS barcode number in the citation: investigations, pursuant to §§ 351.205 and 351.210; administrative reviews, pursuant to § 351.213; new shipper reviews, pursuant to § 351.214; changed circumstances reviews, pursuant to § 351.216; sunset reviews, pursuant to § 351.218; and circumvention inquiries, pursuant to § 351.226. Commerce has historically allowed all of these documents to be cited without requiring them to be placed on the record of other segments or proceedings, and Commerce will codify that practice in these regulations.

In addition, the same citation allowance will also be applied to public versions of preliminary and final scope rulings pursuant to § 351.225, and covered merchandise inquiries pursuant to § 351.227, draft and final redeterminations on remand, and draft and final redeterminations issued pursuant to section 129 of the URAA. After consideration of the arguments pertaining to scope rulings, remand redeterminations, and section 129 determinations from multiple commenters, we agree that those documents should also be able to be cited without the requirement that those documents be placed on the administrative record. Like the other documents listed above, they are statutory and regulatory public and final determinations made by Commerce in individual segments of a proceeding.

Furthermore, Commerce has determined that four additional types of documents argued by interested parties should also be able to be cited without the requirement that those documents be placed on the administrative record: initiation decision documents, such as initiation checklists; memoranda which describe and analyze new subsidy allegations; scope memoranda issued in an investigation; and post-preliminary determination or results memoranda which address issues for the first time after the preliminary determination or results has been issued and before the final determination or results is issued. In the first two types of documents, Commerce is making a determination to initiate, or not initiate, based on certain information, while in the third document Commerce is conducting an analysis on whether a product is, or is not covered by the scope of an investigation. Finally, in the fourth document, Commerce is making a determination for the first time upon which parties may file comments. We find each of these documents serves a unique purpose in the agency's proceedings and is largely self-contained (*i.e.,* they do not require Commerce employees to look outside of the four corners of the document to understand the analysis). Accordingly, we determine that Commerce and interested parties should be able to cite to those documents in other segments or proceedings without separately placing them on the record.

We emphasize that all citations must be cited in full. Commerce can only consider and rely on a cited information source if it is able to retrieve that information source, which may not be possible if the citation to the information source is incomplete. Furthermore, we also emphasize that unlike in past cases, the regulations will now require that all of these document citations include reference to the associated ACCESS barcode numbers. The inclusion of the associated ACCESS barcode numbers in the citation is an additional requirement from what was permitted before, but one that most commenters indicated would be an improvement for parties both outside and within Commerce to easily retrieve the documents and consider them in making preliminary and final determinations. If the citations are not

cited in full, including the associated ACCESS barcode numbers, the regulation states that Commerce may decline to consider the cited information sources in its analysis or determination.

With respect to the other public documents authored by Commerce and argued by the comments, it is important to stress that the conduct of an administrative proceeding is a time-intensive, resource-intensive, and fact-intensive endeavor. Although several commenters stated that collapsing memoranda or calculation memoranda, for example, taken from other segments or other proceedings are not ''factual information'' under the regulatory definition of the term in § 351.102(b)(21), we disagree with that assessment. A collapsing determination, under § 351.104(f) requires that Commerce first determine if two entities were affiliated during a particular period of investigation or review, and then determine whether there is a significant potential for the manipulation of prices or production between the two entities such that they should be treated as one collapsed entity. Likewise, when Commerce issues calculation memoranda, its calculations are based upon the record and data before it in that particular segment of a proceeding. Thus, although we agree with the commenters who noted that each collapsing and calculation memoranda is a legal analysis and decision by the agency, each of those memoranda also reflect conclusions based on the facts unique to the segment of the proceeding in which they were issued. Each document is publicly available, accessible on ACCESS, potentially relevant to a segment or proceeding before Commerce, and contains factual information being introduced on the record of the ongoing segment or proceeding for the first time.

When Commerce employees are considering such submissions on the record, they frequently must review the record of the segment from which the memoranda at issue originated and review further information on those records pertaining to those agency decisions to understand the broader facts and context in which the decisions at issue were made by the agency. It is a time-consuming exercise and, depending on the complexity of the facts and the record of the other segment or proceeding, can be difficult and may require that Commerce employees put even more documents from those other segments or proceedings on the record. This problem becomes even more profound when one recognizes that there are dozens of decision memoranda issued by Commerce on a monthly basis in various segments, with some of those documents being more descriptive of the facts under consideration and self-contained than others. Accordingly, for many decision memoranda not listed in § 351.104(a)(6), Commerce has determined that it would be best to continue its practice of requiring interested parties pointing to those analysis and decision memoranda from other segments and proceedings to submit those documents on the record of the segment to which the parties are arguing that those memoranda are relevant. We appreciate that some interested parties explained that it would be easier for them to simply cite all public Commerce decision memoranda, but their points do not take into consideration the time and effort Commerce employees already devote to analyzing the information placed on the record unique to the segment before the agency. If Commerce were required to independently review the details and context of the records of numerous additional segments in each case, it would quickly become unmanageable.

In response to the arguments that Commerce has tried to prohibit references to past practices and policies in issuing these regulations (*i.e.,* deprived interested parties of a transparent process or deprive importers of their due process rights under the Fifth Amendment of the United States Constitution) we disagree. Commerce believes, in fact, that there is no support for such contentions. Interested parties may, in fact, cite all of Commerce's public decision memoranda from other segments and proceedings and rely on those memoranda for purposes of their arguments in every case. There is no regulation that restricts such citation or argument, and nothing in the *Proposed Rule* suggested that Commerce would prevent reliance on such documents in any given segment. These regulations merely require that when interested parties cite public documents originating with Commerce, and where those documents are not listed under § 351.104(a)(6), then the interested party must submit a copy of that public decision document on the record of the segment in which it is participating. If the interested party is already citing that document to support its claims, then the interested party will naturally have access to the document and should be easily able to take the additional step and submit the document on the record of the segment at issue. If anything, Commerce concludes that this additional step creates a procedure which is more, and not less, transparent, than the practice advocated by the commenters, and in no way deprives importers or any other party of their due process rights under the Fifth Amendment of the United States Constitution.

Finally, with respect to the statements made by commenters on post-preliminary determination and results submissions, we recognize that parties may cite any of the documents listed in section § 351.104(a)(6) to argue that Commerce acted inconsistently with its practices or procedures in a preliminary Commerce determination. There is no question that collapsing and calculation memoranda, for example, from other segments might provide greater factual detail on certain policies or practices, as suggested by some of the commenters. However, it is the very factual specificity of the data in such documents which we believe also warrants the provision of such documents and data on the record for consideration in accordance with the timing and filing requirements of § 351.301. The inclusion of such documents on the record allows analysts and interested parties to consider that information in detail in determining the relevance of those previous Commerce decisions to the facts on the record before the agency.

2. Commerce will not revise § 351.301(c)(4), as proposed.

Section 351.301(c) is the provision in Commerce's regulations that provides timelines and procedures for parties to place new factual information on the official record, and allows other interested parties the opportunity to respond to those submissions. Section 351.301(c)(4), in particular, pertains to Commerce and its ability to submit new factual information on the record. In light of multiple cases in which parties have filed unrelated and irrelevant new factual information on the record in response to Commerce's placement of a calculation document on the record, Commerce proposed an exception to § 351.301(c)(4) in the *Proposed Rule,* which would allow Commerce to place a calculation or analysis memorandum from another segment or proceeding on the record to clarify its practice in response to the parties' arguments in their briefs and rebuttal briefs, while interested parties could respond with comments, but not with further new factual information.[29]

Commenters were universally opposed to Commerce's proposal to amend § 351.301(c)(4) and to allow the agency to place agency analysis and calculation memoranda on the record in

[29] *See Proposed Rule,* 88 FR 29857.

response to arguments made in briefs and rebuttal briefs without allowing interested parties an opportunity to submit other agency analyses or calculation memoranda in response. Certain commenters expressed concerns that merely allowing responsive arguments, but not responsive evidence, would severely limit interested parties' ability to meaningfully respond to the documents placed on the record by Commerce, and would prohibit interested parties from being able to provide additional information showing that Commerce's past practice and policies were inconsistent with that being claimed by the agency, or, at minimum, clarifying minute distinctions between cases in which those policies and practices were applied.

Several other commenters clarified that they were not opposed to a restriction on unrelated, irrelevant, and non-responsive factual information from interested parties, and some even indicated they would support such limited restrictions, but those commenters stated that a wholesale prohibition on responsive factual information was unreasonable.

Commerce's Response:

In light of the comments received by Commerce in response to the *Proposed Rule* on both the proposed changes to §§ 351.104(a) and 351.301(c)(4), Commerce has determined that it agrees that the regulation change, as proposed, would not provide interested parties with sufficient opportunity to respond to information placed by Commerce on the record late in a segment of a proceeding. Accordingly, Commerce will not adopt the changes proposed to § 351.301(c)(4) in the *Proposed Rule.*

3. Commerce has made certain revisions to the proposed amendments to §§ 351.225, 351.226, and 351.227.

A. Commerce will accept responsive arguments pre-initiation in scope and circumvention inquiries in §§ 351.225(c)(3) and 351.226(c)(3), and allow responsive factual information pre-initiation in circumvention inquiries.

In 2021, Commerce revised its regulations covering scope inquiries at § 351.225 and created new regulations addressing circumvention inquiries pursuant to section 781 of the Act.[30] The revisions were extensive, and the reasons behind many of the changes were numerous. One of the significant changes was the requirement that if an interested party requested a scope ruling, the party must file a standardized scope application. Section 351.225(c) provides a listing of all of the required information for a scope ruling,[31] and § 351.226(c) largely incorporates the same requirements for a circumvention inquiry request.[32] Commerce explained in the *Scope and Circumvention Final Rule* that it hoped that by listing criteria and standardizing the filing requirements in scope and circumvention inquiries, it would accelerate the process by allowing all of the information necessary to initiate to be submitted on the record at once, rather than requiring Commerce to issue supplemental questionnaires and ask for further information, both before and after initiation.

In the *Proposed Rule,* Commerce noted that in the *Scope and Circumvention Final Rule,* Commerce had indicated that parties would have an opportunity to challenge the adequacy or veracity of a scope ruling application or circumvention inquiry request. However, such an opportunity was never codified in §§ 351.225 and 351.226.[33] Commerce's experience since the issuance of the scope and circumvention rules was that it would be beneficial to the agency to allow ''interested parties, other than the applicant or a requestor, a clear opportunity to submit comments to Commerce on the adequacy of the application or request, within 10 days after the submission of the application or request.'' [34] Thus, such a change to the regulation was proposed.

Furthermore, Commerce explained that the factors considered in a circumvention inquiry differ from a scope inquiry in that, for example, circumvention inquiries frequently require Commerce to consider if there were patterns of trade. Thus, Commerce explained in the *Proposed Rule* that Commerce was also proposing that in circumvention inquiries specifically, responsive new factual information could be provided in that 10-day time period and that the party alleging circumvention could respond five days afterwards with comments and new factual information to rebut, clarify, or correct the interested parties' new factual information. Commerce explained that it expected ''that by allowing for both comments and new factual information in this manner,'' the record would contain even greater amounts of information so that the agency could determine if the criteria to initiate were satisfied.[35]

Commerce received several comments on these proposals. Some commenters opposed allowing interested parties to file comments on a scope application pre-initiation in scope inquiries and comments on a circumvention inquiry request and new factual information pre-initiation in circumvention inquiries. They complained that the procedure would be burdensome and slow the process down for initiation, when in fact, the new and revised regulations were intended to speed up the process for scope and circumvention inquiries. They commented that the proposed regulation changes would lead to a mini-investigation in each case and create an adversarial process before the case was ever even initiated, and that the very purpose of a scope or circumvention inquiry is to gather information and to make a determination on the basis of the record—not to conduct such an analysis pre-initiation. Some commenters even pointed to a proposed bill pending before Congress that would prohibit Commerce from accepting any unsolicited communications from any person other than an interested party requesting a circumvention inquiry pre-initiation and suggested that Commerce should act in accordance with that proposed legislation and codify the prohibition of all such submissions. Overwhelmingly, the main concern from those opposed to the consideration of additional information before initiation was that it would slow the process down.

In the alternative, some parties suggested that if Commerce continues to accept comments and new factual information before initiation, the date for such filings should not be due 10 days after filing of a scope ruling application or circumvention inquiry request, but instead after the administrative protective order (APO) is established. They explained that this would give responsive submitting parties more adequate time to review a scope ruling application or circumvention inquiry request.

Commerce's Response:

Commerce has made no changes to the proposed §§ 351.225(c)(3) and 351.226(c)(3) and will permit the submission of arguments and information as provided in those regulatory provisions. Since 2021, Commerce has conducted scope and circumvention inquiries in which interested parties have indicated to Commerce that information in a scope

[30] *See Scope and Circumvention Final Rule,* 86 FR 52300 (September 20, 2021) (*Scope and Circumvention Final Rule*).

[31] *Id.,* 86 FR 52313–15.

[32] *Id.,* 86 FR 52339–41.

[33] *See Proposed Rule,* 88 FR 29853, n. 9.

[34] *Id.,* 88 FR 29853.

[35] *Id.*

ruling application or circumvention inquiry request was not accurate or was missing key information, and it became evident that the regulations did not adequately provide a means for such concerns to be raised and considered in a timely fashion. These changes remedy that problem. We believe allowing interested parties to file comments 10 days after the filing of a scope application to address the adequacy of the application, and file comments and new factual information 10 days after the filing of a circumvention inquiry request to address the adequacy of that inquiry request, is consistent with current practice, is fair to all interested parties, and better informs Commerce so that the agency does not initiate a scope inquiry or circumvention inquiry on inaccurate or incomplete data. To the extent that the bill before Congress proposed that Commerce should be prohibited from considering information which would better inform the agency in determining to initiate a segment, Commerce is in no way bound by that proposed legislation and must prepare regulations which we believe best serve the parties and the government.

To the extent that parties are concerned that this will slow down the initiation process, it is the agency's belief that for scope ruling applications, it should make no difference. If Commerce does not initiate a scope inquiry or reject a scope application within 31 days, it will be deemed initiated pursuant to § 351.225(d)(1). For circumvention inquiry requests, it is possible that the addition of new factual information may delay initiation by a few days, as we explained in the *Proposed Rule* and describe further below, but we believe that greater amounts of information filed in a timely fashion will assist the agency in making an informed and fair decision to initiate, or not initiate, a circumvention inquiry.

Finally, we will continue to require the date for filing responsive arguments, and in circumvention inquiries, new factual information, to be 10 days from the filing of the application or request. The date of issuance of the APO will differ from case to case, and one of the purposes of these regulations is to standardize procedures and bring predictability to scope and circumvention inquiries. We believe that 10 days from the date of submission on the record is adequate time for interested parties to consider if there are reasons to be concerned about the completeness or veracity of an application or circumvention inquiry request, and if so, to raise those concerns with Commerce on the record.

B. Commerce may request clarifications from a scope ruling applicant or circumvention inquiry requestor, reset the initiation deadline from the date of filing a complete response to the clarification request, and extend the deadline for initiating a circumvention inquiry by 30 days if an interested party has filed new factual information in response to the circumvention inquiry request, in the §§ 351.225(d)(1) introductory text and (d)(1)(ii) and (iii) and 351.226(d)(1) introductory text and (d)(1)(ii) and (iii).

Commerce explained in the *Proposed Rule* that one issue which has arisen several times since the 2021 scope and circumvention regulations were issued is that there have been proceedings in which Commerce wished to seek clarification on one or more aspects of a submission, but the regulation only permitted initiation or rejection of an application.[36] Frequently, Commerce may only seek answers, for example, to less than a page of questions, and it is an inefficient use of the agency's, scope applicants', and circumvention inquiry requesters' time to reject a submission, and then have the requesters resubmit everything with just the answers to those few questions added to the application or request. Commerce, therefore, proposed a modification to its scope and circumvention inquiry regulations to reset the 30-day deadline to start after a party files a timely response to a clarification request by Commerce.

In addition, Commerce recognized that by allowing parties to submit new factual information in response to a circumvention inquiry request and allowing requesters to respond with new factual information on surrebuttal, the additional data may require Commerce to extend beyond the normal allowance of up to an additional 15 days if it is not practicable for Commerce to initiate within 30 days. Accordingly, Commerce proposed up to an additional 15-day extension in that scenario, to allow a combined extension of no more than 30 days beyond the original 30-day deadline if new factual information was submitted on the record pre-initiation.[37]

Commerce received several comments on these provisions. Most of the commenters expressed a frustration that while the 2021 regulations had created procedures in scope and circumvention inquiries that would lead to 30-day initiations in scope inquiries, and no more than 45-day initiations in circumvention inquiries, the addition of allowing Commerce to seek clarification, and then resetting the 30-day clock after a timely response to the clarification request, seemed to undermine, or at least slow down, much of that expedient process. For that reason, a few commenters objected to Commerce being able to seek clarification, while others requested that Commerce limit its ability to request clarification pre-initiation to a single request.

Likewise, several commenters objected to Commerce allowing for an additional 15-day extension to initiate circumvention inquiries if new factual information had been submitted on the record in response to a scope application or circumvention inquiry request. They commented that this would extend the period even further than the scope and circumvention regulations anticipated when they were issued and would be unnecessary and impractical. One commenter expressed concerns that by extending the deadline from 30 days to 60 days, it was an open invitation to exporters to ship additional circumventing merchandise to the United States, to the detriment of domestic producers, because those entries would not be covered by a subsequent circumvention finding. They suggested that the best defense to prevent further circumventing merchandise from being exported to the United States would be to allow for no extensions and no additional information on the record pre-initiation.

One commenter expressed disagreement with those commenters opposed to allowing Commerce to seek clarification. That commenter stated that it is a waste of time for Commerce and applicants or requestors to refile because of a few small issues, which could have quickly been resolved and provided to the agency upon request if given an opportunity. That commenter explained that, in the past, foreign exporters and importers took advantage of rejected circumvention inquiry requests and shipped additional products to the United States before domestic producers could refile their submissions with necessary supplemental information (thereby allowing their merchandise shipped pre-initiation from being covered by an affirmative circumvention finding).

Another commenter suggested that if Commerce retains its ability to seek clarification from scope ruling applicants or circumvention inquiry requestors, Commerce should revise the regulation to allow interested parties to submit comments on the adequacy of the responses to Commerce's requests for clarification 10 days after they are

[36] *See Proposed Rule,* 88 FR 29854.

[37] *Id.,* 88 FR 29856.

submitted or 10 days after an APO has been established, whichever is latest.

Commerce's Response:

Commerce explained in the *Proposed Rule* that it is both fair and more efficient to allow the agency to seek clarifications and reset the 10-day deadline rather than reject a scope ruling application or circumvention inquiry request outright, when the agency just needs a limited amount of clarifying information. It is evident that the greatest concern from many commenters is that Commerce will use the ability to seek comments as a *de facto* way to grant extensions and delay scope and circumvention inquiries. That is not the purpose or intention of that provision. If a scope ruling application is generally incomplete and inadequate, Commerce will reject it. However, if Commerce determines that it needs additional information to supplement one or two sections of an application, for example, or it needs to understand responses to a limited number of questions, Commerce should be able to seek those answers without rejecting the scope application or circumvention inquiry request. The purpose of these modifications to the regulation is not to let the ''exception become the rule'' in this regard—we agree that one of the purposes of the standardization and the addition of express requirements in the scope and circumvention regulations was to accelerate the process of initiating and conducting scope and circumvention inquiries. The ability to seek clarification should not be interpreted as a means for anyone to inhibit that purpose.

Furthermore, the commenters that opposed allowing for an additional 15 days to consider whether or not to initiate a circumvention inquiry expressed little understanding of the time and resources it takes for an agency to consider record information and determine whether initiation is warranted. We understand the desire of some commenters for a speedy process, but as we explained above, we do not believe that Commerce should ignore or prohibit facts and arguments in circumvention cases that might undermine the accuracy or completeness of a circumvention inquiry request. Commerce's determinations are based on record information, and it is important that when the agency initiates a scope or circumvention inquiry, it does so based on accurate and, when possible, complete information.

We therefore continue to find that it is advisable for Commerce to seek clarifications from applicants or requestors pre-initiation, when necessary. Further, we find that allowing for an extra 15 days for the agency to review and analyze new factual responsive information on the record pre-initiation is not unreasonable.

Commerce does not, however, agree that the agency should allow other parties to submit further, new factual information and arguments on the record after a party files a timely submission in response to Commerce's request for clarification, as suggested by some commenters. If the facts are simple, then Commerce may be able to initiate quickly after receiving the responses or reject the application or request quickly as well. In other words, Commerce may not need, or want, 30 full days after the timely clarification response has been filed to initiate a scope or circumvention inquiry. If Commerce was required to allow parties to provide additional submissions after a clarification has been requested and a response has been filed, we believe that there would be too much of a possibility of unnecessary delay—the concern expressed by most of the commenters on this issue. This would be true whether the deadline is after the submission of the response or, as some commenters suggested, after the APO has been established. Therefore, we have not codified an additional layer of comments and submission of new facts following the receipt of clarification responses on the record, pre-initiation.

Finally, we note that on September 29, 2023, Commerce revised the language of §§ 351.225(d) and 351.226(d) with some small changes.[38] The new language does not conflict with this revised addition to the regulation, and Commerce is merging the two sets of textual revisions together in the final regulation.

C. Commerce agrees that the proposed provisions under §§ 351.225(f), 351.226(f), and 351.227(d) should be revised to reflect that only the filing and timing restrictions set forth in § 351.301(c) do not apply to the filing deadlines set forth in the scope, circumvention, and covered merchandise regulations.

In §§ 351.225(a), 351.226(a), and 351.227(a), each provision states that ''unless otherwise specified, the procedures as described in subpart C of this part (§§ 351.301 through 351.308 and 351.312 through 351.313) apply to this section.'' There were outstanding questions as what procedures were ''otherwise specified'' in Commerce's 2021 regulations, and in the *Proposed Rule,* Commerce proposed that §§ 351.225(f), 351.226(f), and 351.227(d) be amended to incorporate language that stated that none of the procedures described in subpart C applied to the scope, circumvention and covered merchandise filing deadlines and procedures.[39]

Three commenters pointed out that the language proposed by Commerce inadvertently covered too many regulatory provisions, because there was no reason to believe that the timing and filing provisions of §§ 351.225, 351.226, and 351.227 intended to forgo, for example, the formatting requirements of § 351.303, or the rules pertaining to treatment of, access to, and use of business proprietary information under § 351.306. Those commenters suggested that, in fact, Commerce intended only to state that § 351.301(c) does not apply to those regulations, because that is the general regulatory provision that sets forth filing and timing restrictions for submissions of factual information in AD and CVD inquiries.

Commerce's Response:

We agree with the commenters who stated that Commerce intended only for the filing and timing restrictions of § 351.301(c) to be inapplicable to the scope, circumvention, and covered merchandise regulations. Accordingly, we have revised the proposed language in §§ 351.225(f) and 351.226(f) to state that ''The filing and timing restrictions of § 351.301(c) do not apply to this paragraph (f), and factual information submitted inconsistent with the terms of this paragraph may be rejected as unsolicited and untimely,'' and revised the proposed language in § 351.227(d) to state that ''the filing and timing restrictions of § 351.301(c) do not apply to this paragraph (d), and factual information submitted inconsistent with the terms of this paragraph may be rejected as unsolicited and untimely.'' With respect to § 351.301(b), Commerce expects that the types of factual information submitted under §§ 351.225(f), 351.226(f), and 351.227(d) will normally be covered by § 351.102(b)(21)(i) and (ii). Accordingly, the written explanation requirements of § 351.301(b) will continue to apply to those regulations.

D. Commerce will continue to allow for extensions to preliminary circumvention determinations up to 90 days in § 351.226(e)(1).

Section 351.226(e)(1) states that a preliminary circumvention determination will be issued no more than 150 days after the publication of the notice of initiation and does not

[38] *See APO and Service Final Rule,* 88 FR 67077–78.

[39] *See Proposed Rule,* 88 FR 29854.

expressly provide for the opportunity of an extension. Furthermore, § 351.226(l)(2)(ii) provides that if Commerce preliminarily determines that merchandise was circumventing an AD or CVD order during a given period of time, and the merchandise was not being suspended pursuant to those orders, Commerce will normally direct CBP to suspend liquidation of all entries of the merchandise entered on or after initiation and collect cash deposits on those entries. The preamble to the *Scope and Circumvention Final Rule* explains the reason for this sequence. In summary, Commerce determined that in most cases, the publication of the initiation of a circumvention inquiry in the **Federal Register** would be sufficient notice for producers, exporters, and importers that their non-subject merchandise might subsequently be determined to be subject to an order through a circumvention determination.[40] Thus, rather than direct suspension starting at the date of an affirmative preliminary determination, the regulation provides that normally Commerce will direct suspension, and the collection of cash deposits, to be applied retroactively to entries on or after initiation—thereby preventing parties from quickly shipping merchandise after initiation to the United States in avoidance of potential future ADs or CVDs.

In the *Proposed Rule,* Commerce explained that given the complexity of certain circumvention inquiries, it was reasonable to expressly provide for an extension to the issuance of a preliminary circumvention determination.[41] Commerce determined that a 90-day extension, for a deadline of no more than 240 days from the date of publication of the notice of initiation, was a reasonable extension amount, and emphasized that this would not alter the maximum deadline for issuing a final circumvention determination of 365 days.[42]

Multiple commenters objected to Commerce's addition of an extension allowance to § 351.226(e)(1). They expressed concerns that because no suspension and collection of cash deposits would commence for entries not already suspended under the AD or CVD orders until a preliminary determination was issued, that any extension of a preliminary determination would provide circumventing parties with a longer time in which they could benefit from duty-free entry and possibly evade the payment of ADs or CVDs altogether. The commenters suggested that Commerce's ability to extend a preliminary circumvention determination was unnecessary and that allowing for an extension largely undermined the remedy provided in the *Scope and Circumvention Final Rule* in § 351.226(l)(2)(ii), perpetuating ongoing harm to domestic producers. In particular, some commenters expressed concerns that extending a preliminary circumvention determination by three months could, in fact, guarantee that many entries which entered earlier in the period of the inquiry, and were the foundation of a circumvention allegation, would be liquidated without regard to any ADs or CVDs, defeating the very purpose of a circumvention inquiry and determination.

In the alternative, some commenters suggested that if Commerce continues to allow for an extension of a preliminary circumvention determination, then it should limit such an extension to only 45 days, rather than 90 days. Others proposed that Commerce should limit an extension to 50 days, to allow for no more than 200 days before issuance of a preliminary determination after publication of the initiation **Federal Register** notice. Those commenters also suggested that Commerce should consider revising its regulations under § 351.226(l), and permit suspension of liquidation of entries in every circumvention inquiry starting immediately at initiation, rather than waiting for a preliminary affirmative circumvention determination, thereby mitigating the significant risk of merchandise being liquidated as entered before Commerce issues its preliminary determination.

Commerce's Response:

Since Commerce issued its *Scope and Circumvention Final Rule* in 2021, Commerce has found good cause to extend multiple preliminary circumvention determinations pursuant to § 351.302(b). This is because circumvention inquiries can be extremely complicated. For example, in analyzing if merchandise was assembled or completed in a third country in circumvention of AD or CVD orders, Commerce must consider the five factors which establish if there was circumvention, the factors which inform Commerce if a process of assembly or completion is minor or insignificant, an analysis of patterns of trade, a determination of affiliations, and consideration of increases in imports of particular merchandise into the foreign country.[43] If there are multiple parties involved, such analyses require that Commerce request a large amount of information from the interested parties, and then analyze all of that data on the administrative record. It has been the agency's experience that in many circumvention inquiries, 150 days is simply not enough time for Commerce to gather sufficient information, conduct such an analysis, and make a preliminary determination.

We appreciate that parties are concerned that extending a preliminary determination could possibly allow more entries of merchandise to be liquidated without regard to ADs or CVDs than if Commerce issued its preliminary circumvention determination earlier. However, the presumption behind that complaint is that Commerce would be able to adequately gather all of the necessary information and conduct the necessary analysis of all of the statutory and regulatory criteria needed in a preliminary circumvention determination within 150 days in every circumvention inquiry. Given the complexity and number of circumvention determinations, not to mention other AD and CVD proceedings demanding resources and time from Enforcement and Compliance teams, we stress that such a presumption is mistaken.

Our experience has shown that there will be some circumvention inquiries which do not require more time, or at least not an additional 90 days, to complete a preliminary circumvention determination. For example, a circumvention inquiry with a single producer or exporter conducted pursuant to a minor alterations allegation under section 781(c) of the Act might not require Commerce gather as much information or conduct such a lengthy analysis as, for example, a further assembly or completed circumvention allegation under section 781(a) of the Act, in a case involving multiple producers or exporters. It is a case-by-case determination, but ultimately, Commerce needs the flexibility to extend its preliminary circumvention determination when the strains on the record and the agency's resources require such an extension.

Furthermore, we continue to believe that Commerce should not direct CBP to suspend liquidation and collect cash deposits on non-subject merchandise not already suspended until it has made an affirmative circumvention determination, as reflected in § 351.226(l)(2)(ii), for all of the reasons

[40] *See Scope and Circumvention Final Rule,* 86 FR 52344–50.

[41] *See Proposed Rule,* 88 FR 29856.

[42] *Id.,* 88 FR 29856–57.

[43] *See* sections 781(b)(1), (2), and (3) of the Act.

provided in the *Scope and Circumvention Final Rule.* Therefore, we have made no changes to § 351.226(l).

In addition, although we appreciate why some commenters have suggested that Commerce reduce the 90-day extension allowance to 45 or 50 days, we continue to believe that a 90-day allowance remains appropriate. Just because the 90-day allowance exists in the regulation does not mean that Commerce will always extend up to the full 90 days. Furthermore, regardless of the length of the extension, § 351.226(e)(2) still requires Commerce to issue its final circumvention determination no later than 365 days from the date Commerce published the initiation notice in the **Federal Register**.

Finally, we must emphasize that even if some additional entries might be liquidated without regard to ADs or CVDs if Commerce extends a preliminary circumvention determination, that extension will not ''undermine'' the circumvention law or defeat the very purpose of a circumvention inquiry and determination, as some commenters alleged. Commerce will continue to direct CBP to continue to suspend entries which are already suspended at initiation under § 351.226(l)(1). Further, Commerce will continue to direct CBP to suspend entries of, and collect cash deposits on, merchandise covered by an affirmative circumvention determination retroactively to the date of initiation, in accordance with § 351.226(l)(2)(ii). That means that even if the period in which Commerce made its preliminary determination was extended, the effect of that decision will only reach further back to cover more entries that have not yet been liquidated. Accordingly, most of the remedy available without the extension provision in § 351.226(e)(1) will remain in place with the addition of the extension provision to § 351.226(e)(1), and the benefit will be that Commerce will be able to conduct its inquiry, complete its preliminary analysis, and enter a preliminary circumvention determination consistent with its statutory and regulatory obligations.

E. Commerce will continue to codify its practice that it will only conduct a scope ruling of merchandise not yet imported if it has been historically commercially produced and sold in § 351.225(c)(1) and (c)(2)(x).

Commerce explained in the *Proposed Rule* that although it will conduct scope inquiries of merchandise not yet imported into the United States, under its practice, it will only do so if that merchandise has been commercially produced and sold.[44] Commerce proposed to codify that practice in § 351.225(c)(1) and (c)(2)(x).

Some commenters were critical of Commerce's practice and the codification of that practice in the regulations. They expressed concerns that the ''heightened standard'' would place an unreasonable burden on applicants. They suggested that Commerce should clarify that scope ruling applicants need only be required to provide evidence available to them, and not be required in every case to prove that a product has been commercially produced and sold because sometimes scope applicants may not have access to such information. They pointed out that the initial language of § 351.225(c)(2) actually provides that all of the information required in the application is based on language that states, ''to the extent reasonably available to the applicant.'' [45] Their concern was that that language proposed for § 351.225(c)(1) states that the applicant ''must provide evidence that the product has been commercially produced and sold,'' with no ''reasonably available'' language attached to it.[46]

Commerce's Response:

It is Commerce's practice to require evidence that merchandise which has not yet been imported into the United States was commercially produced and sold in other foreign markets before Commerce will initiate a scope inquiry on that merchandise. We have therefore not changed the language in § 351.225(c)(1) as proposed in the *Proposed Rule.* As some of the commenters pointed out, there are many areas in our law in which Commerce will consider allegations and complaints based on information which is reasonably available to the party making the allegation or claim. In this case, however, Commerce is extending a service to review merchandise which has not yet even entered the United States stream of trade. In providing such a service, it is therefore critical that Commerce not expend its time and resources on sample sales, prototypes, or mere models of merchandise not yet commercially produced. It is also critical that Commerce not expend its time or resources on merchandise which has never been commercially sold and might never be commercially sold in the United States in the future. Accordingly, the requirement that applicants provide evidence of both of these factors is reasonable and Commerce will not revise its practice or the proposed evidentiary standard in this final rule.

With respect to the language set forth in proposed § 351.225(c)(2)(x), although it falls under the introductory language of paragraph (c)(2), like all of the other elements requesting information from scope ruling applicants, we wish to be clear that if an applicant is unable to provide (1) a statement that the product has been commercially produced, (2) a description of the countries in which the product is sold, or has been sold, and (3) relevant documentation which reflects the details surrounding the production and sale of that product in countries other than the United States, then Commerce will not conduct a scope inquiry of that merchandise. We have made one minor change, however, from the *Proposed Rule* to § 351.225(c)(2)(x)(B), that allows evidence of countries in which merchandise is either currently being sold, or evidence of countries in which the merchandise ''has been sold'' in the past. Although the contemporaneity of such sales would be important, there is no requirement under Commerce's practice that the sales must be currently made in other countries.

F. Commerce has modified its scope clarification regulation, § 351.225(q), in response to the comments received.

Section 351.225(q) was added to the regulations in the *Scope and Circumvention Final Rule* and Commerce explained in the *Proposed Rule* that it was intended to codify Commerce's historical usage of such clarifications to address scope-related issues not addressed by scope rulings.[47] The current regulation provides an example in which, after Commerce has previously issued repeated interpretations of particular language in a scope, Commerce issues a scope clarification that takes the form of an interpretive footnote to the scope when the scope is published or set forth in instructions to CBP. However, Commerce explained in the *Proposed Rule* that this was not the only situation in which Commerce issues a scope clarification post-order, and it determined that the regulation would benefit by setting forth other instances in the regulation in which a scope clarification would be appropriate. Further, Commerce provided examples in which a scope clarification could take different forms (*e.g.,* **Federal Register** notices, memoranda in the context of an

[44] *See Proposed Rule,* 88 FR 29853.

[45] *See* § 351.225(c)(2).

[46] *See Proposed Rule,* 88 FR 29871.

[47] *Id.*, 88 FR 29855–56.

ongoing segment, and the aforementioned interpretive footnote).[48]

Commerce received a few comments on the proposed changes to § 351.225(q), primarily concerned with the breadth and reach of the language of the provision. Commenters expressed concerns that Commerce was trying to avoid the disciplines of the scope ruling regulation requirements through the scope clarification provision. Commenters worried that the provision was trying to avoid notice and comment, due process protections, and essentially issue scope rulings without a fulsome analysis. Some commented that the current language was sufficient, while others questioned even the current (*i.e.,* unmodified) language of the provision, challenging the clause in § 351.225(q) which states that scope clarifications can be used to clarify ''whether a product is covered or excluded by the scope of an order at issue based on previous scope determinations covering the same or similar products'' [49] and asking how that analysis differs from the analysis conducted under § 351.225(k)(1)(i)(C).

Some commenters suggested that all scope clarifications should be published in the **Federal Register**, or that, at minimum, Commerce should include all scope clarifications in the quarterly notice of scope rulings published in the **Federal Register** in accordance with § 351.225(o). They also objected to the fact that it is Commerce's practice to issue scope clarifications in the context of ongoing segments, instead of conducting a separate segment, like a scope ruling, and allowing parties outside of the segment to comment on a clarification. They stated that scope clarifications, by their nature, are not company-specific and could affect the trading community broadly.

Other commenters requested that Commerce explain in greater detail its authority to interpret a scope through a scope clarification, and one commenter protested Commerce's reference to the four scenarios set forth in the proposed regulation as just examples, and its statement in the *Proposed Rule* preamble that ''these examples are not exhaustive.'' [50] That commenter expressed concerns that such broad language provided uncertainty to the parties and, again, suggested that Commerce was trying to evade the disciplines of a scope ruling analysis under § 351.225(k) through scope clarifications.

Commerce's Response:

Commerce has considered the comments raised by the commenters and concluded that the language of § 351.225(q) should be narrowed and revised to better reflect the purpose and form of a scope clarification.

To begin, Commerce has the statutory and regulatory authority as the administrator of the trade remedy laws to clarify the scope of an order when the need arises. Commerce has a long history of issuing clarifications in its proceedings, and there is no question that such clarifications assist in the administration of the AD and CVD laws. However, a scope clarification is not equivalent to a scope ruling or scope determination, and Commerce never intended for the regulation to equivocate the two through the codification of the original § 351.225(q) or the proposed revision in the *Proposed Rule.* The commenters have pointed to concerns with both the original and modified language, and we understand those concerns. Thus, we have revised the provision in response to those concerns.

First, in the introductory language to § 351.225(q), Commerce explains that a scope clarification may be issued in any segment of a proceeding that provides an interpretation of specific language in the scope of an order and addresses other scope-related issues, but makes clear that a scope clarification may not analyze or determine whether a product is covered by the scope of an order in the first instance, outside of the situations explicitly listed in the regulation. The purpose of a scope ruling, unlike a scope clarification, is to determine if a specific physical product, in the first instance, is covered or not covered by an AD or CVD order.

Next, rather than provide ''examples'' that were non-exhaustive, as was set forth in the *Proposed Rule,* the new § 351.225(q)(1) provides four specific situations in which a scope clarification may be applied. First, it may be used to determine if a product is covered or excluded by the scope of an order if Commerce has previously issued at least two scope determinations or rulings covering the same products with the same physical characteristics. This is the example which is set forth in the existing regulation. Such a situation arises, for example, when one exporter exports a product with certain physical characteristics, and Commerce issues a scope ruling on that product. Then, another exporter exports a product with the same physical characteristics, and Commerce issues a scope ruling on that product as well. Then a third exporter exports a product, again, with the same physical characteristics, and Commerce determines that rather than repeat the same analysis through multiple scope rulings, a scope clarification is the appropriate means of communicating its determination in general going forward for that particular product with specific physical characteristics.

In response to those commenters who requested that Commerce explain the difference between this language and the analysis set forth in § 351.225(k)(1)(i)(C), in Commerce's analysis under § 351.225(k), Commerce is considering whether a product is covered, or not covered, by an AD or CVD order in the first instance, and is looking to Commerce's earlier scope rulings and determinations covering physically same or similar products under the order at issue, as well as orders with same or similar scope language, for guidance. In the example above, Commerce would likely consider the sources listed in § 351.225(k)(1)(i)(C) as part of its analysis of the products exported by the first and second scope ruling applicants to determine if both products are covered, or not covered, by the scope of an AD or CVD order. It is only once Commerce continues to receive repeated requests for scope rulings on the same physical product that Commerce might determine, instead, to issue a general scope clarification covering products with the same physical characteristics.

The second situation set forth in the regulation pertains to section 771(20)(B) of the Act, for merchandise imported by, or for the use of, the Department of Defense, in which coverage by the scope of an AD or CVD order is not at issue. Under that provision, the issue is not if the product is covered by an order, but if the merchandise is able to avoid the payment of duties pursuant to the limited governmental importation exception set forth in the statutory provision. The purpose of a scope ruling is to determine if a product is covered by the scope of an order, not if subject merchandise should be excluded from coverage pursuant to a statutory exception to the trade remedy laws. In that situation, a scope clarification is an appropriate means of addressing the issue.

The third situation relates to language or descriptors in the scope of an order that has been subsequently updated, revised, or replaced under certain circumstances. The regulation explains that those circumstances involve modifications to the language in the scope of an order pursuant to litigation or a changed circumstances review under section 751(b) of the Act, changes to HTSUS clarifications, as administered by the ITC, and changes to

[48] *Id.*

[49] *See* § 351.225(q).

[50] *See Proposed Rule,* 88 FR 29856.

industrial standards set forth in a scope, as determined by the industry source for those standards identified in the scope. Such changes have the potential to lead to confusion and, therefore, in those circumstances a scope clarification might be beneficial. For example, sometimes, products covered by a particular HTSUS classification set forth in an AD or CVD order following an investigation may not be subsequently covered by that same HTSUS classification when it is revised in the future. In that case, Commerce might issue a scope clarification in an ongoing segment of a proceeding, explaining that the HTSUS classifications are provided for illustrative reasons, but are not binding on the merchandise covered by a scope. Accordingly, if the product was covered at the time the AD or CVD order was issued, Commerce could explain through a scope clarification that the subsequent change in that classification would not change the coverage status of merchandise under the AD or CVD order.

Finally, the fourth situation pertains to the need for clarification of an analysis conducted by Commerce in a previous scope determination or scope ruling. The regulation provides an example where Commerce previously determined in a country-of-origin determination, pursuant to § 351.225(j)(2), that the country-of-origin was established at a certain stage of production where the agency determined that the essential component of the product was produced or where the essential characteristics of the product were imported. If Commerce observes that a company in a segment of the proceeding has divided that stage of production between two or more countries, Commerce may need to clarify its previous country-of-origin analysis to explain in which part of the stage of production was the essential component produced or the essential characteristics imparted. Such an analysis might not require a new scope ruling but could instead be addressed through a scope clarification.

In response to those commenters suggesting that scope clarifications should never be conducted in segments of proceedings, and should always be published in the **Federal Register**, or at least be published in the quarterly notice of scope rulings under § 351.225(o), we disagree that publication in the **Federal Register** is usually necessary. Historically, Commerce has addressed scope clarifications in individual segments because the nature of a scope clarification is such that it is targeted only to a limited issue before the agency, like many other calculation and methodological issues which Commerce normally faces in its investigations and administrative reviews on a case-by-case basis. However, we recognize that there may be situations in which a scope clarification may be less specific to the case at hand and may have outsized effects on those subject to an AD or CVD order in general. In that situation, Commerce believes the agency would benefit from the broader participation of the ''trading community,'' as noted by one of the commenters. Accordingly, removing the ''examples'' language from the proposed regulation, Commerce has modified § 351.225(q)(2) to provide that scope clarifications may take the form of an interpretive footnote to the scope when the scope is published or issued in its instructions to CBP, in a memorandum issued in an ongoing segment of a proceeding, or, at the discretion of the Secretary, in a **Federal Register** document. The regulation provides that when the scope clarification is conducted as a standalone segment, Commerce will publish a preliminary notice of scope clarification in the **Federal Register**, provide parties with at least 30 days to file comments with the Secretary, and then address comments received in a final notice of scope clarification published in the **Federal Register**. To be clear, Commerce does not believe that the publication of a scope clarification in the **Federal Register** will be necessary for most scope clarifications, but Commerce does agree that it should be an option available for Commerce in certain circumstances.

G. Commerce has made minor edits to §§ 351.225(m)(2), 351.226(m)(2), and 351.227(m)(2) to clarify certain terms in those provisions.

In reviewing the proposed revisions to the scope, circumvention, and covered merchandise regulations, Commerce became aware that language proposed for §§ 351.225(m)(2), 351.226(m)(2), and 351.227(m)(2) stated that the Secretary would include on the record of the CVD proceeding a copy of the ''final determination'' and a ''preliminary determination.'' [51] We have concluded that such language is not sufficiently clear. Therefore, in the final regulations, we are revising that sentence in § 351.225(m)(2) to state that once the Secretary issues a final scope ruling on the record of the AD proceeding, the Secretary will include a copy of the final scope ruling memoranda, a copy of the preliminary scope ruling memoranda if one had been issued, and ''all relevant instructions to U.S. Customs and Border Protection.'' The language for § 351.227(m)(2) will align with the circumvention language, but will instead apply to a covered merchandise proceeding. We determine that this change will provide added clarity on the information which will be placed on the record of the CVD proceeding following a scope, circumvention or covered merchandise determination issued on the record of the companion AD proceeding.

H. Commerce made no changes in responses to other scope and circumvention issues raised in the comments on the Proposed Rule.

One commenter criticized Commerce's existing regulations that require that scope, circumvention, and covered merchandise proceedings in companion orders should be conducted on the record of the AD proceeding. That commenter also suggested that Commerce should place preliminary scope, circumvention, and covered merchandise rulings/determinations on the record at the same time that those preliminary determinations are placed on the AD record. Furthermore, that commenter expressed frustration that although parties with an APO in previous AD segments could move information from one AD segment to another under the revised § 351.306(b)(3), those who were not covered by an APO in those segments could not.

Another commenter expressed concerns with the language of the current standard APO, stating that it does not reflect the cross-proceeding sharing provisions of § 351.306(b)(3) and (4). They offered suggestions for language to revise the standard APO once these regulations become final.

Commerce's Response:

Commerce will continue to conduct scope, circumvention, and covered merchandise segments covering companion orders on the record of the AD segment. We will not place information on the CVD record following the notification to interested parties that all subsequent filings should be filed on the AD segment of the proceeding, as explained in §§ 351.225(m)(2), 351.226(m)(2), and 351.227(m)(2), until final scope rulings and circumvention and covered merchandise determinations are issued. With respect to the APO, Commerce intends to modify its standard language to incorporate the changes to the regulation, but those changes will not be reflected in the regulation and the APO will not be revised until the effective date of the final rule.

4. Commerce has made certain revisions to the proposed amendments

[51] *See Proposed* Rule, 88 FR 29872, 29873.

to Notices of Subsequent Authority—§ 351.301(c)(6).

As Commerce explained in the *Proposed Rule,* sometimes while an administrative segment is ongoing, a Federal court may issue a holding, or Commerce may issue an administrative decision, in another case which an interested party believes is directly applicable to an issue currently before the agency.[52] When that occurs, the interested party may file on the record a Notice of Subsequent Authority. The uniqueness of a Notice of Subsequent Authority is that the subsequent authority may occur at any time, including after the time for new factual information under § 351.301(c) has passed, after briefs and rebuttal briefs have been filed consistent with § 351.309(c) and (d), and possibly right up until Commerce issues a final determination or final results in a segment of an AD or CVD proceeding.

Currently, Commerce has no regulation guiding the filing of, or receipt and use of, a Notice of Subsequent Authority, nor is there any regulation allowing other interested parties to comment on such a Notice. Further, there is no regulation which addresses the filing of a Notice of Subsequent Authority in light of the administrative procedures and deadlines which Commerce faces in the last few weeks of a segment (*e.g.,* meeting internally to get official clearances for the agency's decisions and positions, drafting and finalizing positions, completing calculations when necessary, and preparing documents for publication in the **Federal Register** and for release to the parties under the APO). Accordingly, under statutory deadlines, it might simply be untenable for Commerce to consider a Notice of Subsequent Authority in the days immediately preceding a final determination or final results. Commerce, therefore, determined in the *Proposed Rule* that it would be beneficial to issue a regulation which addressed the procedures and deadlines for the filing of a Notice of Subsequent Authority and a response to such a notice.[53] It therefore proposed a new regulatory provision, § 351.301(c)(6), which stated that Commerce would ''only be required to consider and address'' a Notice of Subsequent Authority if it was filed 30 days or more before a final determination or results deadline and a response to that Notice if it was filed 25 days or more before that final determination or results deadline.[54] Furthermore, the proposed regulation set forth the content requirements of such a Notice and responsive comments in § 351.301(c)(6)(iii).

Some commenters generally accepted Commerce's proposal, while four commenters expressed concerns. Two commented that Commerce already had sufficient discretion to consider and address Notice of Subsequent Authority whenever and however it wished, and voiced concerns that parties would abuse what they consider ''subsequent authority'' under this provision. Another expressed concerns that not only did Commerce have such discretion, but if Commerce was unable to consider arguments before its final determination or results, then the party would have the opportunity to appeal the decision and Commerce could address the alleged authority in a remand redetermination. That party also stated that Commerce's restriction of filing dates of 30 days and 25 days might be unlawful, because when a precedential court or agency decision is issued, Commerce is required by law to consider it and follow it, regardless of whether the decision is issued one day or one month before a final determination or decision. That commenter emphasized that constraining parties to file by 30 days and 25 days would not relieve Commerce of its legal obligation to follow binding precedent. The three commenters therefore suggested that Commerce should not implement the proposed Notice of Subsequent Authority provisions, or at least not implement the timing restrictions, in the proposal.

The fourth commenter expressed concerns that the 30-day and 25-day deadlines would lead to unnecessary litigation when subsequent authorities, of which Commerce was aware, arose and Commerce nonetheless issued final determinations or results inconsistent with binding authorities. That commenter suggested that the regulation should allow Commerce to consider extensions in certain circumstances, or at least move the deadlines closer to the final determination or results deadlines by 15 days.

Commerce's Response:

After consideration of the comments, we agree that the timing language as proposed in § 351.301(c)(6)(ii) was too restrictive given Commerce's legal obligation to consider subsequent authorities when possible. Accordingly, we have removed the language of § 351.301(c)(6)(ii) which stated that Commerce would ''only be required to consider and address'' Notices of Subsequent Authority and rebuttal comments submitted within the 30-day and 25-day deadlines. Instead, the revised language states only that Commerce ''will consider and address'' Notices of Subsequent Authority and rebuttal comments filed within those deadlines.

On the other hand, we also believe that interested parties should file Notices of Subsequent Authority only when the authorities are immediate and ''subsequent'' to agency actions. Commerce has timing requirements in each of its segments for parties to make the agency aware of relevant court and agency decisions as the segment progresses. If a party is aware of the existence of an alleged binding authority but does not alert Commerce of that alleged authority until 30 days before the deadline for issuing the final determination or results, we believe that such an action would be inconsistent with our normal deadlines and an abuse of this provision. Accordingly, we have added a second timing requirement to the regulation that Notice of Subsequent Authority may only be filed within 30 days after the alleged subsequent authority was issued.

In addition, a new sentence was added to the regulation which states that given statutory deadlines, ''the Secretary may be unable to consider and address the arguments and applicability of alleged subsequent authorities adequately in a final determination or final results if a Notice of Subsequent Authority or rebuttal submission is submitted later in the segment of the proceeding.'' Finally, we edited references to final results ''of administrative review'' to make it just final results in general because a Notice of Subsequent Authority may be filed in other administrative segments, such as circumvention inquiry proceedings under section 781 of the Act and § 351.226 or a scope ruling proceeding under § 351.225.

We appreciate the concerns expressed by the commenters that if a court holding, for example, is binding on Commerce and arises immediately before the issuance of a final determination or results, Commerce may be lawfully bound by that holding despite the fact that Commerce may also be administratively unable to consider and address that holding before the agency decision is issued by a statutory deadline. As one of the commenters stated, in that case, the only option may be for parties to litigate the issue and have Commerce address the subsequent authority in a remand redetermination.

[52] *Id.,* 88 FR 29857.

[53] *Id.*

[54] *Id.,* 88 FR 29873.

Still, though, it is possible in some cases that Commerce may be able to consider and address subsequent authorities and arguments in less than 30 or 25 days before the deadline for a final determination or final results, but Commerce's ability or inability to consider and address subsequent authority in a truncated period of time would be highly case-specific and cannot be guaranteed by the regulation.

Section 351.301(c)(6)(ii) primarily is intended to inform the public that if Notices of Subsequent Authority are filed 30 days or more before the deadline of a final determination or results, and a response is filed 25 days or more before the deadline for a final determination or results, Commerce will be able to consider and address the alleged authority and arguments for and against its application to the segment of the proceeding. Accordingly, if the alleged authority was issued before those deadlines, interested parties must file their Notice of Subsequent Authority by the 30-day deadline. If interested parties wait to submit notice of the alleged authority after those deadlines, or if the alleged authority was issued after those deadlines, then Commerce's ability to consider and address the alleged authority will be entirely dependent on the agency's administrative resources and existing time constraints before the agency issues its final determination or results.

5. *Commerce has made certain revisions to the CVD AFA hierarchies in—§ 351.308(j).*

In 2015, in the Trade Preferences Extension Act (TPEA), Congress added section 776(d) to the Act, which addresses Commerce's application of AFA under sections 776(a) and 776(b). The provision discusses Commerce's ability to select the highest CVD rate or highest dumping margin in certain circumstances, provides that there are no obligations to make certain estimates or address certain claims, and gives guidance for Commerce in otherwise selecting a CVD rate or dumping margin from the facts otherwise available. [55] With respect to CVD proceedings, in particular, section 776(d) of the Act states that Commerce may ''(i) use a countervailable subsidy rate applied for the same or similar program in a countervailing duty proceeding involving the same country; or (ii) if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use.'' [56] That language implements, in general, Commerce's longstanding use of CVD AFA hierarchies, and Commerce stated in the *Proposed Rule* that it was codifying those hierarchies, in full, by adding a new paragraph to § 351.308. [57]

As a preliminary matter, although Commerce proposed that the CVD AFA hierarchies be codified as § 351.308(g) in the *Proposed Rule,* we have subsequently concluded that other provisions found in section 776(d) of the Act, and parts of Commerce's AFA practice in general, should be codified in § 351.308 and should logically precede the CVD AFA hierarchies in the regulation. Accordingly, we have moved the CVD AFA hierarchies to § 351.308(j) in this final rule, and have reserved § 351.308(g), (h), and (i) for future rulemaking. [58]

In the CVD hierarchy regulation, Commerce provides for one hierarchy for investigations in § 351.308(j)(1) and a second hierarchy for administrative reviews in § 351.308(j)(2). In addition, the regulation provides guidance on the application of the CVD hierarchy in both types of segments in § 351.308(j)(3), providing that Commerce will treat rates less than 0.5 percent as a *de minimis* rate, will normally determine a program to be a similar or comparable program based on Commerce's treatment of the program's benefit, and will normally select the highest program rate available in accordance with the hierarchical sequence, unless Commerce determines that the highest rate is otherwise inappropriate. In addition, in accordance with section 776(c)(1) of the Act, which requires certain facts available derived from secondary information to be corroborated, § 351.308(j)(3)(iv) states that when Commerce determines a CVD AFA rate from secondary information using the hierarchy, it will determine those facts available to be corroborated.

Commerce received several comments on the AFA CVD hierarchies. Generally, the comments were supportive, though most of those commenters expressing support for the provision opposed Commerce's proposed use of an ''above-zero'' threshold in the first step of the AFA hierarchy governing investigations, and instead suggested that the regulation should include an ''above-*de minimis*'' threshold. While these commenters recognized that the intention of the proposed rule was to codify existing Commerce practice, they also commented that the ''above-*de minimis*'' threshold in no way conflicted with the statutory language and, in fact, would better reflect the purpose and goals of the AFA CVD hierarchy. Those commenters focused primarily on concerns that parties could obtain a more favorable result by failing to cooperate than if they had cooperated fully by gaming the ''above-zero'' threshold, undermining Commerce's statutory directive to discourage non-compliance. Further, some commenters also expressed concerns that even though section 776(d)(3) of the Act was added by Congress in the TPEA and explicitly states that in selecting an AFA rate Commerce is not required to estimate what a CVD rate would have been if the respondent had cooperated, or demonstrate that an AFA rate reflects a respondent's ''alleged commercial reality,'' the ''above-zero'' threshold implicitly considers both.

In addition, multiple commenters suggested revisions to the proposed regulation as it relates to instances when Commerce may determine that a rate selected from a hierarchy is inappropriate. Section 351.308(j)(3)(iii) states that ''{the} Secretary will normally select the highest program rate available in accordance with the hierarchical sequence, unless the Secretary determines that such a rate is otherwise inappropriate.'' One commenter noted that deviation from the hierarchy may be necessary to ensure the statutory purpose of AFA is achieved and stated that the placement of § 351.308(j)(3)(iii) at the end of the regulatory provision made this purpose seem like an afterthought. This commenter suggested moving a portion of this paragraph to the introductory section of paragraph (j), and subsequently deleting § 351.308(j)(3)(iii).

Other commenters requested that Commerce elaborate on specific instances in which Commerce may deviate from an AFA hierarchy or otherwise deem a rate selected via a hierarchy to be inappropriate. These suggestions included, *inter alia,* requests that: Commerce clarify that the use of the word ''normally'' permits deviation from the hierarchy when it fails to effectuate the purpose of the AFA statute; an explicit statement that Commerce will not apply the hierarchy to generate a *de minimis* CVD rate for uncooperative respondents; and modifications to paragraph (j)(3)(iii) of § 351.308 to specifically note that Commerce may deviate from a hierarchy if the rate ''fails to ensure that the party

[55] *See* TPEA of 2015, Public Law 114–27, 129 Stat. 362, 384 (2015), sec. 502, codified at 19 U.S.C. 1677e(b)(1).

[56] *See* sections 776(d)(1)(A)(i) and (ii) of the Act.

[57] *See Proposed Rule,* 88 FR 29858.

[58] To prevent confusion, to the extent parties made arguments about proposed § 351.308(g) in their comments, we have referred to those comments below as referencing § 351.308(j).

does not obtain a more favorable result by failing to cooperate than if it had cooperated fully, or is not sufficiently adverse so as to deter future noncompliance.''

In addition, one commenter requested that Commerce clarify that it will not apply lower AFA rates in response to the same types of uncooperative responses regarding the same program from one segment of a proceeding to another, while another commenter suggested that Commerce must calculate ''a reasonably accurate estimate of the respondent's actual rate'' and, therefore, should edit paragraphs (j)(1)(iii) and (j)(2)(ii) and (iii) of § 351.308 to read that Commerce will ''apply the highest calculated above-*de minimis* rate for the most similar or comparable program.''

Finally, another commenter expressed broad disagreement with the proposed regulation, claiming that the application of an adverse inference in CVD rate calculations is not permitted by the WTO and inconsistent with the ''spirit'' of the CIT's understanding of the use of AFA in general. This commenter referenced certain Panel and Appellate Body decisions in support of its statement that the 1994 WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) does not allow the imposition of ''punitive'' measures and that the purpose of Article 12.7 of the SCM Agreement is not to ''punish non-cooperating parties.'' Further, that same commenter stated that Commerce's use of AFA ''contradicts the legal principles'' expressed by the CIT, referencing challenges to AD proceedings and CVD proceedings which did not involve Commerce's application of the CVD AFA hierarchies.

Commerce's Response:

After consideration of the comments, we have determined to make one change to the proposed regulation covering the AFA hierarchies. We are replacing ''above-zero'' with ''above-*de minimis*'' in § 351.308(j)(1)(i). While Commerce seeks to balance the dual goals of relevancy and inducement in its application of AFA, it must do so while properly effectuating the statutory goal of compliance and ensuring that parties do not obtain a more favorable result by failing to cooperate than if they had cooperated fully. We believe replacing the ''above-zero'' requirement with an ''above-*de minimis*'' threshold in paragraph (g)(1)(i) of § 351.308 better accomplishes this objective, for the reasons stated by the commenters. For example, as the commenters pointed out, there could be situations in which parties obtain a more favorable result by failing to cooperate than if they had cooperated fully through an abuse of the ''above-zero'' threshold. Such an outcome would be unacceptable. We do not believe the same situation would arise with the use of an ''above-*de minimis*'' threshold. Accordingly, we have adopted the suggested revised standard in this final rule.

On the other hand, we disagree with the one commenter's proposal to move the ''normally select'' and ''unless the Secretary determines that such a rate is otherwise inappropriate'' language in § 351.308(j)(3)(iii) to elsewhere in the regulation. Section 351.308(j)(3) contains several generally-applicable rules and principles for when Commerce is utilizing the AFA hierarchies, and we believe a general principle that Commerce will select the highest program rate available in accordance with the hierarchical sequence, unless otherwise deemed inappropriate, is properly placed in this section, whereas moving this statement to the introductory section would not provide additional clarity. Moreover, we disagree that the placement of paragraph (j)(3)(iii) in § 351.308 does not indicate that this provision is more or less important than any other in the regulation.

Regarding the requests that we elaborate on specific instances in which Commerce may deviate from an AFA hierarchy or otherwise deem a rate selected via a hierarchy to be inappropriate in the regulation, we have not elected to make such explicit declarations in this final rule, as we believe that codifying such scenarios would unnecessarily inhibit Commerce's flexibility to address situations on a case-by-case basis. The introductory language of paragraph (j) of § 351.308 states that ''the Secretary will *normally* select the highest program rate available using a hierarchical analysis as follows . . .'' and further provides in paragraph (j)(3)(iii) that ''{the} Secretary will *normally* select the highest program rate available in accordance with the hierarchical sequence, *unless the Secretary determines that such a rate is otherwise inappropriate*'' (emphasis added). We believe this language provides Commerce with sufficient flexibility to codify its long-standing practice, but still allows Commerce to apply an alternative AFA remedy in exceptional situations. It is Commerce's long-standing practice that it will normally utilize the applicable hierarchy (either for investigations or administrative reviews) when selecting a program rate as AFA. However, we recognize that there may be certain instances where Commerce must deviate from this default approach when the facts of a given case or of a particular type of subsidy program across several cases necessitate such deviation. For example, in certain CVD investigations, we have determined that rather than apply an AFA CVD hierarchy to certain non-responsive companies for particular income tax programs, the facts on the record warranted an adverse finding that those non-cooperative companies paid no income tax during the relevant period.[59] Pursuant to such a finding, we therefore determined to apply the corporate income tax rate as the highest possible benefit that could be applied for such programs.[60]

Accordingly, given the wide variety of potential fact patterns and unforeseen circumstances that Commerce may encounter in the future, we do not believe specifically outlining and limiting the circumstances Commerce may, or may not, deviate from its default methodology of selecting the highest program rate in the regulation would be beneficial to Commerce's application of AFA in CVD investigations and administrative reviews in future cases.

Likewise, we will not place language in the regulations that states that Commerce will or will not apply different AFA rates in response to the same program for the same parties from one segment of a proceeding to the next. Commerce applies two distinct hierarchical methodologies for investigations and administrative reviews, and therefore, naturally, the AFA rate which results from those two different hierarchies might differ, even when applied to the same parties in a different segment on the same proceeding. Commerce's use of different hierarchies for investigations and administrative reviews, which reflect inherent differences in the circumstances around investigations versus administrative reviews, has been upheld by the CIT on multiple

[59] *See, e.g., Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 82 FR 53473 (November 16, 2017), and accompanying Issues and Decision Memorandum (IDM) at 8 (citing *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521 (April 4, 2011), and accompanying IDM at the section, ''Application of Adverse Inferences: Non-Cooperative Companies) (explaining that Commerce applied an adverse inference that each of the non-responsive companies paid no income tax during the period of investigation and ''{the} standard corporate income tax rate in China is 25 percent . . . . We, therefore, find the highest possible benefit for all income tax exemption and reduction programs combined is 25 percent (*i.e.,* the income tax programs combined provide a countervailable benefit of 25 percent).'').

[60] *Id.*

occasions,[61] accepting that ''the administrative review AFA hierarchy achieves the dual goals of relevancy and inducing cooperation.'' [62] Maintaining consistency in applying our CVD AFA hierarchy provides predictability and transparency to parties involved in administrative proceedings, and we see no reason to change that practice in these regulations.

The TPEA added section 776(d)(3)(A) to the Act which states that Commerce ''is not required'' for ''any purpose'' to ''estimate what the countervailable subsidy rate'' would have been if the party ''had cooperated.'' [63] Nonetheless, one commenter suggested that Commerce should amend its hierarchies to do just that when applying AFA in CVD proceedings. We have not adopted that suggestion in this final rule. The proposed and final rule reflect Commerce's practice, which has been upheld as in accordance with law by the CIT.[64] Under that practice, through the hierarchy, Commerce selects the highest above-*de minimis* rate for similar or comparable programs, but not necessarily identical or ''most'' similar programs. Under its practice, as now codified by this final rule, Commerce determines a program to be a similar or comparable program based on the Secretary's treatment of the benefit, as stated in § 351.308(j)(3)(ii).

Finally, we disagree with the commenter who expressed concerns that Commerce's CVD AFA hierarchy is inconsistent with the United States' WTO obligations and the general AFA views of the CIT. Commerce's practice and these regulations are fully in compliance with the United States' WTO obligations. Furthermore, Commerce's use of CVD AFA hierarchies has been sustained by the CIT on numerous occasions, as noted earlier in this section. Thus, we find the commenter's suggestion that Commerce may not utilize such AFA rates in its CVD calculations (if circumstances warrant) to be unavailing and we have made no further revisions to § 351.308 other than as described above.

6. Commerce has made minor changes to its regulations addressing government inaction which distorts certain costs through weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, and environmental protections.

In the *Proposed Rule,* Commerce explained that because ''government inaction and failure to enforce property (including intellectual property), human rights, labor, and environmental protections lowers the cost of production for firms in their jurisdiction,'' it was proposing modifications to its regulations to consider such inaction when determining if certain potential surrogate values, benchmark prices, or input costs of production are potentially distorted or otherwise not in accordance with market principles.[65] Commerce explained that this is because such firms are not paying a ''cost of compliance'' to meet regulatory standards for which firms operating in other jurisdictions are responsible.[66] Commerce also discussed how the economics literature explains this in terms of externalities and public goods, identifying the fact that firms base their decisions almost exclusively on direct cost and profitability considerations and largely ignore the indirect societal costs of their production decisions.[67]

Notably, although Commerce received several comments on the proposed revisions to §§ 351.408(d), 351.416(g)(10) and (11), and 351.511(a)(2), it received no comments that challenged the concept that weak, ineffective, or nonexistent real, personal and intellectual property protections, human rights protections, labor protections, and environmental protections can result in lower direct costs of production that do not reflect indirect societal costs. Commerce explained in the *Proposed Rule* that for each of these situations, there are scenarios that can result in distorted costs of production (*e.g.,* a lack of environmental laws or the existence of slave, forced, or child labor).[68] Accordingly, Commerce explained that, consistent with its statutory and inherent authority to select appropriate surrogate values in determining a normal value for a non-market economy analysis, select appropriate benchmarks prices in its less than adequate remuneration analysis, and determine if a particular market situations exists that distort costs of production, Commerce was codifying its ability to consider such arguments if interested parties raised such claims and provided sufficient evidence to support allegations.[69]

A. Commerce does not agree with the overarching, generalized concerns expressed by certain commenters.

Certain commenters expressed overarching concerns about Commerce's proposals, claiming that Commerce did not have the appropriate expertise or statutory authority to address the lack of various ''social'' protections in its analysis. One commenter suggested that Commerce was ''attempting to set itself up as judge, jury and executioner on matters of property rights, human rights, labor rights'' and ''environmental protections,'' and that by analyzing the protections provided by various countries, Commerce was ''unilaterally'' ''asserting authority to stand in judgment of the enforcement of various rights by other sovereign nations,'' despite the fact that allegedly Commerce possesses no particular expertise in how property rights (including intellectual property), human rights, labor rights, or environmental protections should best be ''defined, implemented and enforced.'' That commenter claimed that nothing in the trade laws appoints Commerce to act as the ''global rights police'' and expressed concerns that Commerce's proposal would ''punish respondents for operating in countries that do not meet a U.S. administration's policy preferences.''

Another commenter claimed that Commerce was trying to ''insert social

[61] *See, e.g., Clearon Corp.* v. *United States,* 359 F. Supp. 3d. 1344, 1360–61 (CIT 2019) (sustaining Commerce's application of the second step of the review hierarchy, noting the hierarchy method is judicially approved); *Essar Steel Ltd.* v. *United States,* 908 F. Supp. 2d 1306, 1310–11 (CIT 2013) (sustaining Commerce's application of the second step of the review hierarchy and use of an adverse rate calculated for Essar for a similar program in a previous administrative review of the CVD order at issue), *aff'd* 753 F. 3d 1368 (Fed. Cir. 2014); and *SolarWorld Ams. Inc.* v. *United States,* 229 F. Supp. 3d 1362, 1366 (CIT 2017) (*SolarWorld*) (sustaining Commerce's application of the second step of the review hierarchy despite a lower rate than using the investigation hierarchy).

[62] *See SolarWorld,* 229 F. Supp. 3d at 1370 (stating ''{t}he court assesses the methodology for reasonableness and for sufficient explanation of the reasoning underlying the approach . . .. Although it could be argued that a case-by-case hierarchy system also would be reasonable, that possibility does not make Commerce's hierarchy structure unreasonable.'').

[63] *See* section 776(d)(3)(A) of the Act.

[64] *See Changzhou Trina Solar Energy Co.* v. *United States,* 352 F. Supp. 3d 1316, 1329 (''Under Commerce's established {hierarchy} methodology and consistent with the plain text of the statute, Commerce selects a *similar* program, not necessarily the *most similar* program.''); *see also Bio-Lab Inc.* v. *United States,* 487 F. Supp. 3d 1291, 1308 (CIT 2020) (''Selecting a program that is similar is enough to satisfy the statute.'')

[65] *See Proposed Rule,* 88 FR 29859–61; *see also* OECD, *OECD Regulatory Policy Outlook 2018: Glossary,* available at *https://www.oecd-ilibrary.org/sites/9789264303072-51-en/index.html?itemId=/content/component/9789264303072-51-en, accessed February 2, 2021.*

[66] *Id.,* 88 FR 29858–61.

[67] *Id.,* 88 FR 29859 (citing International Monetary Fund (Thomas Helbling), ''Externalities: Prices Do Not Capture All Costs,'' *Finance & Development* (date unspecified); Coase, Ronald, ''The Problem of Social Cost.'' *Journal of Law and Economics,* 3 (1): 1–44 (1960); Cornes, Richard, and Todd Sandler, *The Theory of Externalities, Public Goods, and Club Goods,* Cambridge University Press (1986); and Paul Samuelson, ''Diagrammatic Exposition of a Theory of Public Expenditure,'' *The Review of Economics and Statistics,* 37 (4): 350–56 (1955)).

[68] *Id.,* 88 FR 29859.

[69] *Id.*

considerations into AD calculations'' through ''social dumping,'' which historically the United States did not advocate addressing in the AD law. That commenter expressed concerns that by including social dumping in its analysis, Commerce was inviting other countries to do the same, and to punish United States' exporters because of the United States's own alleged ''under enforcement of labor rights.''

Other commenters challenged Commerce's overall analysis as too broad because it does not define what ''weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, or environmental protections'' means in every case and does not explain if objective international standards, U.S. standards, or other standards are intended to be used in every case to determine if such protections are deficient or not deficient.

Conversely, other commenters stated that not only was Commerce acting within its statutory and inherent authority, but that Commerce's proposal is too narrow, and Commerce should consider even more scenarios involving property (including intellectual property), human rights, labor, and environmental protections (and the resulting low or nonexistent compliance costs). Specifically, those commenters suggested that because a country could take immediate steps following an allegation of a lack of effective protections in an effort to forestall Commerce's actions and ''greenwash a failure to adopt and effectively enforce such protections,'' Commerce should add a requirement to its overarching language that Commerce would consider not only weak, ineffective, or nonexistent protections, but also ''arbitrary'' protections with no lawful history or context. In other words, those commenters advocated that interested parties should be able to argue that an alleged protection in a given case was, in fact, set up solely to avoid Commerce reconsidering prices or costs in its various analyses, and that such ''arbitrary'' protections should not be treated as actual or real protections by the agency.

Commerce's Response:

Commerce has the statutory and inherent authority to consider the impact of weak, ineffective, or nonexistent protections on its analysis of surrogate values, benchmark prices, and costs of production in its PMS analysis. As explained in the *Proposed Rule,* it is well established that Commerce has the authority to consider if potential benchmark prices and potential surrogate values are distorted, and are, therefore, inappropriate to use in its analysis.[70] Not only have courts affirmed such an authority, but Commerce's consideration of potential labor surrogate values in light of evidence of the existence of forced labor in potential surrogate countries was also prominent in three cases before the CIT, again, cited in the *Proposed Rule.*[71]

Commerce emphasizes that in each of the modified regulatory provisions, the focus is on whether weak, ineffective, or nonexistent protections distort prices or costs. This is the same distortion analysis Commerce applies for all less than adequate remuneration benchmarks and surrogate values if interested parties claim that those prices or values are distorted. In that regard, the PMS examples at issue are consistent with the other examples of a PMS set forth in § 351.416(g). Commerce will not use distorted potential benchmark prices or distorted potential surrogate values, and its refusal to use distorted values in its methodologies and calculations is not a novel concept. Further, Congress explicitly directed Commerce in section 773(e) of the Act to consider ''another calculation methodology'' if it determines that a PMS 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.'' Again, it is standard practice for Commerce to consider arguments based on real-world factors that can affect the cost of production, and to reject the use of prices or costs which Commerce has determined to be distorted or potentially distorted.

What would, in fact, be inappropriate would be for Commerce to knowingly ignore real-world factors that distort or potentially distort costs placed on the record. One of the commenters expressed concerns that Commerce is trying to incorporate ''social dumping''[72] into its AD analysis through these regulations. However, Commerce's intent through these regulations is not to consider foreign government policies into its calculations to effectuate change in those policies, but instead to focus on one overarching analysis relevant to its calculations: whether the record reflects that certain prices or costs at issue were, more likely than not, distorted by identified weak, ineffective, or nonexistent protections. Commerce has a great deal of experience in analyzing if prices or costs are distorted, and it is in accordance with that expertise that Commerce is issuing these regulations.

Accordingly, there is no validity to the concerns that Commerce is trying to be a ''judge, jury and executioner'' on the property rights (including intellectual property), human rights, labor rights, and environmental protections administered and enforced by other countries, nor that it is trying to act as ''global rights police'' through these regulatory changes, nor that it is trying to push certain United States ''policy preferences.'' As Commerce recognized in the *Proposed Rule,* every country retains discretion to pursue its own priorities, including the implementation and enforcement of certain laws, policies and standards for the public welfare.[73] If Commerce determines that a company were able to produce its merchandise for prices cheaper than foreign competitors because it followed no workplace safety laws and used forced or child labor, it would be both logical and reasonable for Commerce to reject potential surrogate values derived from sales of that merchandise in a non-market economy AD proceeding. On the other hand, it would be illogical and unreasonable to ignore arguments and record information that shows that those surrogate values are distorted for fear of generalized claims that Commerce is trying to impose itself as a global judge or policeman over other countries'

[70] *Id.,* 88 FR 29860.

[71] *Id.,* at nn. 36 and 39 (citing, *e.g., Ad Hoc Shrimp Trade Action Comm.* v. *United States,* 219 F. Supp. 3d 1286, 1292 (CIT 2017) (citing *Final Results of Redetermination Pursuant to Court Remand, Ad Hoc Shrimp Trade Action Committee* v. *United States,* Court No. 15–00279, Slip Op. 17–27 (CIT March 16, 2017), dated June 6, 2017, available at *https://access.trade.gov/resources/remands/17-27.pdf, aff'd Ad Hoc Shrimp Trade Action Comm.* v. *United States,* 234 F. Supp. 3d 1315, 1320 (CIT 2017)); *Final Results of Redetermination Pursuant to Court Remand, Tri Union Frozen Products Inc. et al.* v. *United States,* Consol. Court No. 14–00249, Slip Op. 17071 (CIT June 13, 2017), dated July 25, 2017, at 8–9, available at *https://access.trade.gov/resources/remands/17-71.pdf, aff'd Tri Union Frozen Prods., Inc.* v. *United States,* 254 F. Supp. 3d 1290 (CIT 2017), *aff'd Tri Union Frozen Products, Inc.* v. *United States,* 741 Fed. Appx. 801 (Fed. Cir. 2018) (collectively, *Tri Union Frozen*); *Refillable Stainless Steel Kegs from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 84 FR 57010 (October 24, 2019), and accompanying IDM at 35; and *Final Results of Redetermination Pursuant to Court Remand, New American Keg* v. *United States,* Slip Op. 21–30 (March 23, 2021), dated July 7, 2021, at 3 (citing *Tri Union Frozen*), available at *https://access.trade.gov/resources/remands/21-30.pdf).*

[72] ''Social dumping'' is defined as ''the practice of allowing employers to lower wages and reduce employees' benefits in order to attract and retain employment and investment.'' *See Collins Dictionary,* ''Social Dumping,'' retrieved November 8, 2023, *https://www.collinsdictionary.com/us/dictionary/english/social-dumping.*

[73] *See Proposed Rule,* 88 FR 29858.

social-, environmental-, and property-welfare priorities. Such claims are inconsistent with what the agency explained in the *Proposed Rule* and are inconsistent with the regulatory modifications being proposed.

Governments may implement and enforce their property (including intellectual property), human rights, labor, and environmental laws and protections as they believe appropriate, just as Commerce may continue to apply its AD and CVD laws in a manner that rejects the use of distorted prices and costs when it determines such a rejection is supported by record information. Further, just as governments might determine to take certain actions and provide certain subsidies to certain industries, even though other authorities might reasonably determine to countervail those subsidies, the same holds true when governments determine to not take certain actions that require compliance costs of producers within their borders. When governments decide not to enact environmental restrictions on a factory's pollution to protect the soil, water, air, or wildlife, or not to enforce existing laws under which that factory would normally be required to undertake costs to implement those protections, it is both logical and reasonable that other countries may consider the impact such decisions have on the costs of production for that factory in their AD calculations. This is not, despite the criticisms of some of the commenters, a judgment on the social welfare policies, priorities, and laws of different countries. Instead, it is a recognition of economic reality—the lack of enforcement of certain protections granted in other countries, or the nonexistence of those protections under law entirely, can have a notable impact on a company's or industry's costs of production.

In sum, the proposed amendments to the AD and CVD regulations in this regard are intended to allow for interested parties to raise issues and supply information on the record about foreign government inaction on implementing or enforcing certain articulated protections and for Commerce to consider that inaction in its analysis and calculations. Accordingly, Commerce rejects claims that it is restricted by law from considering arguments and facts on the record that certain prices or costs are distorted as a result of weak, ineffective, or nonexistent protections in other countries.

In response to the concerns that Commerce is not an expert in labor law, environmental law, human rights law, intellectual property law, or property law in general, the agency is not holding itself out as an expert in these areas. However, Commerce is the U.S. Government agency with an expertise in analyzing costs of production in an AD analysis and has a long-established practice of selecting surrogate values in non-market economy cases and benchmark prices in less than adequate remuneration CVD cases. One commenter expressed concerns that Commerce was ''not equipped'' to consider the impact of weak, ineffective, or nonexistent protections on costs and prices, but Commerce has decades of experience of analyzing cost and price distortions. Accordingly, the agency disagrees with that assessment of Commerce's knowledge, experience, and abilities. The test Commerce applies in each of these cases is one of price or cost distortion—not one of compliance with international laws, agreements, or standards. Commerce needs to consider only whether evidence on the record suggests that prices or costs are lower than they would otherwise be as a result of weak, ineffective, or nonexistent protections. If the answer to that question is ''yes,'' a cost might not be appropriate to use as a surrogate value, a price might not be appropriate to use as a benchmark for a less than adequate remuneration case, and the reported cost of an input might not be appropriate to use in Commerce's cost of production calculations.

Furthermore, we disagree with the claim that Commerce must define what ''weak'' or ''ineffective'' property (including intellectual property), human rights, labor, and environmental standards are, in every case, in these regulations. In fact, such decisions are fact-specific and made on a case-by-case basis. In addition, Commerce does not agree that it should consider or codify certain international standards or sources for its analysis in each case for the same reason. Indeed, trying to incorporate certain international standards, specifically, into the regulations for this purpose could inhibit rather than support an outcome appropriate with the facts and circumstances in a specific case. For example, if the evidence on the record reflected that laws in a given country meet certain international standards, but the record also reflects that certain government authorities have never required a factory or industry to abide by those laws, thereby allowing certain factories or industries to avoid compliance costs and produce and sell their merchandise for lower prices, then a regulation setting forth international benchmarks would not only be of little value, but also prevent the agency from reviewing both the law and the facts as they apply to a business or industry in that foreign country. This is not to say in certain cases, with certain allegations, Commerce might not benefit from considering an international standard, or other laws in the foreign country itself, or even laws and standards in other countries, as part of its determination whether certain protections are weak or ineffective. Just as Commerce considers all of the information placed before it in other cases involving surrogate values and determinations of benchmarks in less than adequate remuneration cases, Commerce would conduct the same type of analysis in determining if protections are weak or ineffective, including in analyzing a PMS allegation under § 351.416(g)(10).

Finally, we also disagree that Commerce should extend its analysis to evaluate whether property (including intellectual property), human rights, labor, and environmental protections are ''arbitrary.'' Regardless of the intention of a protection, if a producer was required to pay a patent-owner for the rights to use certain technology, for example, and that protection was enforced by the government, then Commerce would not find that government inaction existed, nor that any distortions resulted from such inaction. Even if the protections were only temporary during the production period subject to examination, as explained above, it is not Commerce's intention to judge why protections exist, but only to determine if those protections were weak or ineffective during that period of investigation or review and if the costs of production were distorted because of those weak or ineffective protections. Accordingly, we have not incorporated the suggestion to include ''arbitrary'' as a factor for these proposed regulatory revisions.

B. Commerce will analyze weak or ineffective protections by entities entrusted or directed by the government to provide such protections.

In addition to more general allegations and concerns involving Commerce's proposals to amend its regulations to address the cost and price distortions potentially arising from weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, and environmental protections, Commerce received many individual questions and concerns. For example, two commenters requested that Commerce acknowledge that if an entity was entrusted or directed by the government, but is not

a public body or government entity itself, with the responsibility of providing some or all of the listed protections, then Commerce would still conduct the same analysis it would apply if the government itself was responsible for providing those protections, including within the context of a PMS analysis under § 351.416(g)(10).

Commerce's Response:

Commerce agrees with the premise that, no matter if the entity that is supposed to provide a protection is a government-controlled entity or is a private entity entrusted or directed by the government to provide a protection, the agency's analysis will be the same in determining if the protections at issue are weak or ineffective. As the examples in § 351.416(g) are only examples, Commerce determined that it was not necessary to add further language about entrustment and direction into that regulation; however, we agree that the crux of our analysis is not the authority failing to grant an effective protection, but rather the fact that the protection itself is ineffective and the result is distorted prices or costs.

C. The factual information deadlines of § 351.301(c)(3) apply to some of these regulatory revisions.

One commenter requested that Commerce clarify that the deadlines covering submissions of factual information to value factors of production under § 351.408(c) and measure the adequacy of remuneration under § 351.511(a)(2) found in § 351.301(c)(3) apply equally to proposed §§ 351.408(d) and 351.511(a)(2)(v).

Commerce's Response:

Commerce confirms that factual information deadlines covering submissions of factual information to value factors of production under § 351.408(c) and measure the adequacy of remuneration under § 351.511(a)(2) found in § 351.301(c)(3) apply equally to §§ 351.408(d) and 351.511(a)(2)(v). To be clear, § 351.408(d) does not stand alone, but rather exists in addition to the surrogate value methodology described in § 351.408(c), which is the reason paragraph (d) starts with the statement, ''Notwithstanding the factors considered under paragraph (c) of this section . . . .'' Accordingly, the deadlines applicable to § 351.408(c) apply equally to § 351.408(d).

D. Commerce may reject prices which are distorted but not aberrational.

One commenter suggested that, with respect to §§ 351.408 and 351.511, Commerce should clarify that prices or costs do not need to be ''aberrational'' to be disregarded under the proposed government inaction provisions.

Commerce's Response:

Commerce confirms that prices and costs may be distorted, but need not be aberrational, for the agency to reject the use of a surrogate value or benchmark for a less than adequate remuneration analysis. In general, aberrational sales or costs are normally outliers—values which are so high or so low, that they may not even appear to be market-driven. Commerce would not normally consider aberrational sales or costs in a surrogate value or less than adequate remuneration analysis. However, for purposes of selecting a surrogate value or determining the appropriate benchmark to measure the adequacy of remuneration, prices or costs can be distorted by multiple factors (*e.g.,* weak, ineffective, or nonexistent protections) without being considered aberrational. If the record contains potential surrogate values or benchmark prices which Commerce determines are not distorted and are from an economically comparable country that produces comparable merchandise, then in choosing a surrogate, it will normally prefer the non-distorted prices or costs over the distorted prices or costs. That analysis need not require a finding that prices or costs are aberrational in any way.

E. The revised regulations are consistent with the United States's WTO obligations.

Some commenters expressed concerns that Commerce's consideration of the impact of foreign government inaction on costs or prices incorporates concepts not embodied in the relevant WTO agreements and allows Commerce to manipulate its trade remedy laws in an effort to force property (including intellectual property), human rights, labor, and environmental standards on other WTO members. They commented that the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (AD Agreement) does not permit such considerations, pointing to a dispute Panel decision in *European Union-Antidumping Measures on Biodiesel from Argentina,* in which the dispute Panel concluded that a dumping analysis is not intended to cover certain distortions arising out of government actions or circumstances.[74] They also suggested that other international and WTO agreements cover such matters satisfactorily.

Commerce's Response:

Commerce's AD statute and regulations are in full compliance with the United States' WTO obligations. Commerce is permitted under U.S. law and the AD Agreement to consider factors that may objectively distort costs of production. There is no obligation for WTO members enshrined in any of the WTO Agreements to ignore price or cost distortions caused by another government's decision to ignore or permit a company to pollute, use slave labor, or discriminate in violation of a country's own laws, or in absence of laws altogether, and therefore, benefit from cheaper production costs. As we indicated above, Commerce is codifying its consideration of the appropriate surrogate values, benchmark prices, or input cost in an PMS analysis. These considerations are not intended to impose any standards on any country.

Indeed, in the context of a surrogate value (which involves using values from other countries for a non-market economy analysis) and less than adequate remuneration analysis (which involves using prices from other countries to determine an appropriate benchmark value), the rejection of certain surrogates or benchmarks will have no bearing on the countries from which those prices or costs originate in any way. Thus, it is hard to see how such an analysis could ''punish'' the source countries, as stated by some in their comments. Further, for both a surrogate value and PMS analysis, Commerce's analysis under §§ 351.408 and 351.416 will normally be limited only to ''significant'' inputs, reflecting that Commerce's analysis will be a targeted analysis focused only on certain alleged ''weak, ineffective, or nonexistent'' protections and their impact on certain costs of production, and no more.

Finally, we disagree that other WTO Agreements address Commerce's concerns in this regard in any way. These modifications to the trade remedy regulations address distortions in costs or prices caused by weak, ineffective, or nonexistent protections, and other WTO Agreements do not address such cost or price distortions.

F. Commerce need not reward more stringent protections by foreign governments.

Two commenters requested that when Commerce conducts its surrogate value analysis, if it finds that a potential surrogate value has stronger environmental or other such protections than other potential surrogate values, Commerce should ''make an allowance'' for that—essentially improving chances for use of that surrogate value over others. They make the same suggestion

[74] *See Report of the Panel,* European Union—Anti-Dumping Measures on Biodiesel from Argentina, WT/DS473/R, (May 23, 2016) (*European Union-Antidumping Measures on Biodiesel from Argentina*), at para. 7.240.

for potential benchmark prices. Likewise, they suggested an offset to an input cost in a PMS analysis to reflect strong social welfare protections. They comment that doing so would be consistent with the United States' support of renewable energy and climate change reduction programs in other capacities.

Commerce's Response:

Commerce declines to elevate the use of certain potential surrogate values or benchmark prices over others based on, for example, their effective protection of the environment, in this rule. One of Commerce's ultimate goals in this exercise is to select surrogate values which are comparable to the factors of production reported by the non-market economy. If a value is distorted, that may remove it from consideration. However, Commerce is under no obligation to provide offsetting extra credit based on excellent environmental, labor, human rights, or property rights (including intellectual property) protections. The same is equally true in selecting benchmark prices and determining if the costs of an input as reported are reasonable. Indeed, if anything Commerce believes that such an adjustment to those values could create distortions rather than avoid them.

G. External concerns do not impact these regulations.

Some parties commented that United States businesses are actively working to raise standards and protections in other countries, and they suggested that these regulations should be withdrawn because other countries might become frustrated and stymie those efforts. Other parties stated that various environmental programs in other countries meet the same goals as Commerce supposedly intends in these regulations, and thus Commerce should not counteract those programs when given the opportunity, consistent with the proposed regulations.

Commerce's Response:

As noted above, Commerce's concerns in issuing these regulations are to use surrogate values and benchmark prices not distorted by weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, or environmental protections. Likewise, it is also Commerce's intention to not use input prices distorted by a PMS. The efforts by outside parties and governments to strengthen such protections in other countries are not at issue in these regulations, and therefore, do not affect the content of these regulations.

H. Commerce will not codify additional procedures suggested by certain commenters.

Certain commenters requested that in determining the existence of foreign government inaction in §§ 351.408, 351.511, and 351.416(g)(10) and (11), Commerce should directly address the burden of proof in the regulation, describe how much the foreign government will be required to participate, address how Commerce will consider information on the record, and indicate if it intends to verify claims of government inaction.

Commerce's Response:

When selecting a surrogate value or benchmark price, an interested party alleging price or cost distortions has an obligation to place information on the record to substantiate its claims. Likewise, the same holds true if a party argues the existence of a PMS or if government inaction is at issue. We see no need to add further detail on the need for parties to provide Commerce with arguments and information on the record.

With respect to how Commerce will consider such information, again, it will weigh all of the information before it and make a determination as to the appropriate surrogate value or benchmark price or determine if a PMS exists.

Finally, under the statute, verification is only required in investigations. However, Commerce may determine that verification is warranted in other segments of a proceeding. Accordingly, Commerce has determined not to codify a verification requirement in the regulation, recognizing that in some situations, the government inaction and its effect on prices or costs is evident, and little more is needed on the record, while in others, the agency may need to gather more information, and perhaps even conduct a verification, to fully understand the objective facts of the alleged situation.

I. Commerce will not include additional, alternative language suggested by commenters in the regulation.

Two commenters requested that Commerce should ''clarify'' in §§ 351.408 and 351.511 that interested parties are only required to show that government inaction relating to a significant input, or a labor input, existed and that there were ''depressed or suppressed prices'' for that input—not that parties must actually prove that the government inaction caused the depressed or suppressed prices. They suggested that Commerce should specify in the regulations that interested parties need only provide information available to them, and that rather than demonstrating that an ''impact'' on prices exists, as set forth in the proposed § 351.511(a)(2)(v), Commerce should use language about prices being ''suppressed or depressed.'' They also commented that Commerce should revise its language to only require that an interested party submit the information which is ''best available'' to them in making an allegation of distortions—not ''sufficient information'' as is currently set forth also in § 351.511(a)(2)(v). Likewise, another commenter suggested that Commerce should be flexible with interested parties and allow them to submit reports and other third-party information that may not be contemporaneous, but still supports their claims.

Commerce's Response:

Commerce will not modify the language in either § 351.408 or § 351.511 as requested. First, we do not agree that ''best available information'' is the correct standard for an allegation under these regulations. If an interested party believes that government inaction exists, and may have an impact on prices or costs, but does not provide sufficient information to support such an allegation on the record, Commerce will not pursue the issue further. An allegation of cost or price distortions caused by weak, ineffective, or nonexistent protections must be accompanied by sufficient information for Commerce to determine that the allegation is reasonable. A mere allegation with little supporting information will not suffice, even if that is the only information available to the interested party making the allegation.

With respect to the types and quality of documents Commerce might accept for these allegations, we have also decided not to codify such requirements at this time because, again, these are decisions made on a case-by-case basis. Additionally, Commerce must maintain its own flexibility in determining if the evidence of alleged government inaction and distorted benchmark prices and surrogate values is acceptable and sufficient to warrant further Commerce action. Instead, for both § 351.408(d)(1)(i) and (ii), we have added the words ''the Secretary determines'' to clarify that it is Commerce, and not the alleging parties, who will determine if the evidence is sufficient on the record to support the alleged claim. Further, for § 351.511(a)(2)(v) we have rearranged some of the text to make it clearer that this provision pertains specifically to the Secretary's authority to exclude

certain proposed benchmark prices from its analysis.

With respect to the need to use the phrase ''suppressed or depressed'' prices or costs rather than the term ''impact'' in § 351.511 or ''appropriate'' in § 351.408, though we agree that Commerce is primarily concerned about prices or costs being lowered by distortions caused by government inaction, and therefore, in most if not all cases under these provisions, Commerce will be focused on ''suppressed or depressed prices,'' we cannot ignore the fact that artificially higher prices can be just as distortive as suppressed or depressed prices. In accordance with its regulations, Commerce rejects potential surrogate values and benchmark prices when they are distorted and not just when they are suppressed or depressed. Accordingly, it would be illogical for Commerce to use a surrogate value or benchmark price which it determines is over-inflated for a reason(s) based on record evidence and to revise the regulatory language to permit the usage of distorted high prices. Accordingly, we are not making the suggested revisions.

J. Commerce will not further refine the term ''limited number'' or remove the restriction to ''significant inputs'' in § 351.408(d).

Proposed § 351.408(d) limited the surrogate values that Commerce will consider disregarding based on an allegation of foreign government inaction to only ''significant inputs or labor'' and when the proposed surrogate value is ''derived from one country or an average of values from a limited number of countries.'' [75] In the *Proposed Rule,* Commerce explained that such limitations are appropriate because it anticipated that such an analysis could be resource intensive.[76] Commerce explained that it anticipated that the phrase ''limited number'' would ''normally involve averaged values that are sourced from no more than three countries.'' [77]

One commenter suggested that Commerce should more broadly define the term ''limited number'' to not preclude a scenario where there may be averaged values from dozens of countries, but where a significant percentage of the value is derived from a limited number of countries. Other commenters requested that Commerce should not limit its analysis in a PMS allegation to ''significant inputs'' only, and their suggestions equally apply to the same restriction placed in § 351.408(d).

Commerce's Response:

We have determined not to remove the restriction of applying this provision only to ''significant inputs or labor,'' nor will we remove the restriction in the PMS regulation. In both provisions, an analysis of the circumstance at issue (*i.e.,* government inaction resulting in weak, ineffective, or nonexistent protections) would require an analysis of the facts and the law. Furthermore, it would require in both provisions an analysis of the costs at issue and determination as to whether they are distorted or likely distorted. We do not anticipate that it would be reasonable for Commerce to conduct such an analysis for all potential surrogate values in a given case. Accordingly, we are not removing the restrictions set forth in the proposed regulation.

With respect to the definition of ''a limited number,'' we have not codified that term because we think that it should be left to Commerce on a case-by-case basis to determine how many countries may be at issue in an allegation, the nature of the alleged government inactions, and if an average of values will include countries with both government inaction allegations and no government inaction allegations. It is still Commerce's understanding that even three countries might be more than a ''limited number'' if the allegations of government inaction pertain to all three. Accordingly, we have made no change in this regard for purposes of the final rule.

K. Commerce will not issue a regulation in the final rule that countervails government inaction with respect to property (including intellectual property), human rights, labor, and environmental protections.

Two commenters suggested that Commerce should take the proposed government inaction regulations and adapt them into the CVD law. They commented that weak and ineffective government protections should be countervailed as a subsidy which ultimately injures United States industries.

Commerce's Response:

The purpose of these regulations is not to treat weak, ineffective, or nonexistent government protections as a countervailable subsidy, but instead to consider that the lack of protections has real-world impacts on costs of production and prices, and reject the use of distorted surrogate values, benchmark prices, or input costs if Commerce determines that government inaction resulted in such distortions. We, therefore, are not adopting this suggestion in the final rule.

L. Commerce has added text to § 351.416(d)(3)(v) to clarify that if Commerce looks to other countries to determine if certain protections are weak, ineffective or nonexistent, Commerce will normally consider countries that are economically comparable to analyze the cost effects of government inaction.

Certain commenters expressed concerns with proposed § 351.416(d)(2)(v), a provision which stated that Commerce may look to information in other countries to determine if property (including intellectual property), human rights, labor, or environmental protections in the subject country are weak, ineffective, or nonexistent. In doing so, the proposed provision stated that Commerce may consider if those protections exist in those other countries and are effectively enforced there.

One commenter suggested that the provision should be withdrawn because it was unclear and not transparent as required by the WTO Agreements. That commenter requested that Commerce should remove words such as ''weak'' and ''ineffective,'' as they are too general and provide Commerce with too much discretion. Further, the same commenter suggested that because determinations of distortion are made on a case-by-case basis, Commerce should not rely on its past analysis in other cases under this provision to give it any guidance, as every government action and inaction is unique and should be considered so in every case.

Another commenter expressed concerns that nothing in United States law permits Commerce to look to entirely different countries and determine whether actual market prices would have been different if the country under examination had, hypothetically, followed the policies and practices of those different countries.

Commerce's Response:

Upon consideration of the general concerns about Commerce's consideration of weak, ineffective, and nonexistent protections, as well as the claims specific to this provision, Commerce has determined that further clarification is necessary in the regulation. The proposed § 351.416(d)(2)(v) is now § 351.416(d)(3)(v) and Commerce has revised the regulation to include language which states: ''For purposes of this paragraph (d)(3)(v), the Secretary will normally look to cost effects on same or similar merchandise produced in economically comparable countries

[75] *See Proposed Rule,* 88 FR 29874.

[76] *Id.,* 88 FR 29861.

[77] *Id.,* at n.41.

in analyzing the impact of such protections on the cost of production.'' Commerce anticipated that an analysis under this provision would cover same or similar merchandise, and would normally be limited to economically comparable countries, but never stated that in the *Proposed Rule.* Accordingly, we received concerns from various parties that Commerce would look to the United States or similar countries to determine ''acceptable'' property (including intellectual property), human rights, labor, or environmental protections, even when the country at issue is a developing country and in no way economically comparable to the United States. Such an interpretation of that provision was never the agency's intention.

For other alleged PMS allegations, Commerce does not intend to look to the experience of other governments. However, Commerce continues to find that if a country has wide-spread pollution, child labor, slavery, or abuses of intellectual property or other property laws, it would be illogical to compare labor values, for example, within the same country to decide if a particular surrogate is distorted or useable. Nonetheless, it would be equally illogical to look at values of products in other countries that are not the same or similar to the input or subject merchandise at issue. Furthermore, the experiences of foreign governments may differ greatly, but if economies are comparable, it is reasonable to believe that a comparison of property, human rights, labor, and environmental protections on the cost of production would be more appropriate than if the two economies were vastly different. Commerce disagrees with the commenter who stated that Commerce does not have the authority to use such an analysis to consider if weak, ineffective, or nonexistent protections distorted costs, but we do agree that in conducting such an analysis, Commerce should be aware of both the similarities and the differences of the subject country and the country being considered for comparison purposes.

Accordingly, Commerce has retained the language covering this provision in the *Proposed Rule,* but Commerce has added the aforementioned sentence to provide greater clarity on how the analysis under this provision would be conducted.

M. Commerce has added language to § 351.408(d)(1)(i) and (ii) to clarify that it is Commerce who determines if a value is derived from a country that provides subsidies, that was subject to an AD order, or is from a source with weak, ineffective, or nonexistent protections.

In the proposed language for § 351.408(d)(1)(i) and (ii), the provisions stated that Commerce could reject the use of a potential surrogate value if: (1) it was derived from a country that provides broadly available export subsidies; (2) it was shown to be subsidized in that country; (3) it was subject to an AD order; or (4) it was derived from a facility, party, industry, intra-country region or a country with certain weak, ineffective, or nonexistent protections. Upon consideration of the language used in those proposed provisions, Commerce concluded that the text at issue presumed that parties would understand that it's Commerce who determines that one of those factors applies. To provide clarification on this point in the final regulations, Commerce has modified both paragraphs to note that Commerce alone decides that the proposed surrogate value is derived from such sources.

7. Commerce has substantially revised proposed § 351.416, its PMS regulation, in response to several comments.

On November 18, 2022, Commerce issued an advanced notice of proposed rulemaking (*PMS ANPR*) in which it explained that the 2015 TPEA amended section 773(e) of the Act to provide 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,'' Commerce ''may use another calculation methodology under this subtitle or any other calculation methodology.'' [78] Commerce recognized that the Act did not define a PMS and did not identify the information which Commerce should consider in determining if a market situation exists or is particular. Commerce stated that it hoped to provide some clarity on this issue in future regulations, which was why it was issuing the advanced notice of proposed rulemaking.

In the *PMS ANPR,* Commerce referenced the limited legislative history on the provision, in which it highlighted that a member of the U.S. House of Representatives argued that the legislation would ''empower'' Commerce to be able to disregard prices or costs of inputs that foreign producers purchased if Commerce concluded that those input values were ''subsidized'' or ''otherwise outside the ordinary course of trade.''[79] Commerce also cited statements made on the U.S. Senate floor by a U.S. Senator stating that the legislation would help stop U.S. workers and manufacturers from ''being cheated'' by foreign industries that were ''not playing fair'' and ''illegally subsidizing'' the production of certain products.'' [80] Commerce accordingly invited public comments on various factors it might consider in preparing a regulation that would address ''the information which Commerce should consider, or need not consider, in determining a PMS that distorts costs of production.'' [81] Commerce received 19 comments in response from the public on this issue, from which it took many ideas incorporated in the draft regulations, and others it addressed or rejected in the preamble of the *Proposed Rule.*[82]

Commerce received a significant amount of commentary on its proposed § 351.416 in the *Proposed Rule,* covering both sales and cost-based PMS decisions. Commerce considered each comment and has modified its proposed regulation in response to those comments. Further, where Commerce disagreed with arguments made by the commenters, it has addressed those comments below.

A. Commerce has the authority to issue its proposed PMS regulation.

Several commenters supported Commerce's authority to issue a regulation that addresses both sales-based and cost-based PMS analyses and thanked the agency for its attempts to provide clarity on the issue, stating their belief that the proposed regulations would allow for more effective implementation and enforcement of the cost-based PMS provision in the Act. One commenter cited additional legislative history for the concept that the amended trade laws were intended to give Commerce ''flexibility in calculating a duty that is not based on distorted pricing or costs'' in any situation ''when a PMS exists.'' [83] One commenter expressed concerns that Commerce's proposed regulations unnecessarily limit its authority to make cost-based PMS determinations in listing sources of information which it may or may not consider in a given case.

Certain commenters expressed concerns, however, that Commerce may not have the authority under the WTO AD Agreement, specifically under Article 2.2.1.1 of the AD Agreement, to

[78] *See PMS ANPR,* 87 FR 69234 (citing section 773(e) of the Act).

[79] *Id.,* 87 FR 69235 (citing the Congressional Record—House, H4666, H4690 (June 25, 2015)).

[80] *Id.* (citing the Congressional Record—Senate, S2899, S2900 (May 14, 2015)).

[81] *Id.*

[82] *See Proposed Rule,* 88 FR 29861–67, 29875–77.

[83] *See* S. Rep. No. 114–45 (2015) (Senate Finance Committee Report), at 37.

address distorted costs through a PMS. Article 2.2.1.1 of the AD Agreement states that ''costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration.'' [84] In a dispute brought before the Appellate Body, the European Union determined that the cost of soybeans in the production of biodiesel from Argentina was unreasonable because the domestic prices of soybeans, the main raw material used by biodiesel producers in Argentina, were found to be artificially lower than international prices due to distortions created by the Argentine export tax system.[85] It therefore disregarded those costs in its AD calculations. The Appellate Body concluded that this finding, alone, was ''not, in itself, a sufficient basis under Article 2.2.1.1'' to disregard those costs ''when constructing the normal value of biodiesel.'' [86] The Appellate Body stated that an investigating authority was ''free to examine the reliability and accuracy of costs recorded in the records'' of a producer to determine if all costs were captured, were over-or-under-stated, or were not at arm's length, thereby calling into question the reliability of the reported costs.[87] However, if the company's books and records reflected those costs accurately, ''within acceptable limits,'' even if the costs themselves were distorted by various factors, the Appellate Body concluded that Article 2.2.1.1 did not permit investigating authorities to reject the use of those costs as ''unreasonable.'' [88] A subsequent Panel adopted the Appellate Body's interpretation of Article 2.2.1.1 of the AD Agreement and found that the European Union's rejection of regulated natural gas input costs from Russia (which the European Union concluded were far below market prices paid in the unregulated Russian natural gas markets) in determining the costs to construct the normal value of welded tubes and pipes from Russia was not in accordance with Article 2.2.1.1, because the Appellate Body had concluded that the ''reasonably reflect the costs'' language pertains to the reasonableness of a producer's records, and not the reasonableness of the producer's costs themselves.[89] The commenters pointed to these cases and to Appellate Body and Panel conclusions in arguing that Commerce's statute and proposed regulations were inconsistent with the Appellate Body's interpretation of the AD Agreement. On that basis, they suggested that Commerce should not issue a final PMS regulation codifying and clarifying its cost-based PMS practice.

Commerce's Response:

As a preliminary matter, Commerce is issuing its PMS regulations in accordance with its statutory authority as the administrator and enforcer of certain trade remedies codified in the Act. That includes section 773(e) of the Act, which directs Commerce to use another calculation methodology if it determines ''that 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.'' To the extent that the commenters believe that Commerce's proposed regulations are inconsistent with the text of the AD Agreement, the Act itself is consistent with U.S. obligations under the AD Agreement. As the proposed regulations are in full compliance with the Act, we do not believe this line of argument calls into question our ability to issue regulations on the matter.

With respect to the United States' WTO obligations, Commerce disagrees that the United States is prohibited by the AD Agreement from considering and addressing costs of production distorted by only certain government actions or inactions, but not others, in its AD calculations. Commerce is permitted under U.S. law to consider factors which may distort costs of production if record evidence indicates the existence of such distortions. Likewise, Commerce is not prohibited by the WTO Agreements to consider certain actions or inactions taken by governments or other organizations that distort prices or costs in the authorities' calculations through a PMS analysis. Neither the Act nor the AD Agreement limit departures from the use of recorded costs in determining normal value to circumstances where there is an inaccuracy or unreasonable methodology or value used in determining the costs of production recorded in the books and records of the subject producer. Rather, as the TPEA makes clear, departures are warranted when the costs themselves, however recorded, do not accurately reflect the cost of production in the ordinary course of trade. The AD Agreement is intended to help provide transparency and accuracy to AD calculations, not to circumscribe the price and cost distortions which WTO members should ignore or reject.

Finally, with respect to the concerns that Commerce has limited its statutory authority through the proposed regulations, we do not believe that the regulations curtail our authority. Instead, they notify the public of the information that is normally relevant and significant to our PMS determinations.

B. The Act permits Commerce to address a cost-based PMS without also being required to address a sales-based PMS.

Three commenters took issue with Commerce's interpretation of the Act in the *Proposed Rule,* as reflected in § 351.416, that addresses sales-based particular market situations separately from cost-based particular market situations. Citing various CIT decisions, they commented that it is not enough under the Act for Commerce to find 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,'' and that for Commerce to ''use another calculation methodology'' under section 773(e) of the Act, Commerce is required to reach further legal and factual conclusions that the perceived distortion ''prevents a proper comparison'' to the U.S. price, under sections 771(15)(C) and 773(a)(1)(B)(ii)(III) of the Act. They suggested that Commerce's interpretation is ''inconsistent'' with the governing statute and that the only distortion which Commerce can address is a distortion at such a level that the distortion prevents a proper price comparison with home market or third-country sales.

Key to their concern are the examples of ''sales and transactions'' listed in section 771(15) of the Act which defines ''ordinary course of trade.'' Under the definition section of the Act, ''ordinary course of trade'' means ''the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.'' [90] That language is consistent with Commerce's interpretation of the

[84] *See* Article 2.2.1.1 of the AD Agreement.

[85] *See European Union—Anti-Dumping Measures on Biodiesel from Argentina,* WT/DS473/AB/R (October 6, 2016), at para. 6.54.

[86] *Id.* at para. 6.55.

[87] *Id.* at para. 6.41.

[88] *Id.*

[89] *See European Union—Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia (Second Complaint),* WT/DS494/R (July 24, 2020), at paras. 7.229–7.253.

[90] *See* section 771(15) of the Act.

Act, and the commenters do not suggest otherwise. However, after the definition, it states that the administering authority ''shall consider the following sales and transactions, among others, to be outside the ordinary course of trade,'' and lists disregarded sales, disregarded transactions, and ''{s}ituations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export prices.'' [91] The commenters pointed out that in a Federal Circuit decision, *Hyundai Steel Co.,* [92] the court affirmed a CIT holding that tied a sales-based PMS with a cost-based PMS decision. The Federal Circuit in *Hyundai Steel Co.* further held that the ''TPEA amendment to section 1677(15) linked the constructed value subsection with 'situations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or the constructed export price.' '' [93] The commenters therefore suggested that for Commerce to find and adjust for a cost-based PMS, it must determine that the cost distortions create a price-based PMS that prevents a proper comparison between the normal value and the export price or constructed export prices.

In addition, one of the commenters expressed concerns that because Article 2.2 of the AD Agreement only speaks to a PMS which addresses a situation in which ''sales do not permit a proper comparison,'' the proposed regulations appear to violate the United States' WTO obligations.

Commerce's Response:

Commerce disagrees with the position taken by the three commenters that Congress intended for Commerce to address a cost-based PMS that distorts costs of production only if it also decided that the PMS would also prevent a proper comparison of normal value with the export price or constructed export price. Commerce does not believe that the Act creates such an obligation and has never applied its cost-based PMS analysis in that manner in any of its proceedings.

First and foremost, the second sentence of section 771(15) of the Act, which lists examples of sales or transactions that are not in the ''ordinary course of trade'' is not exhaustive. By its terms, the statute states that Commerce ''shall consider the following sales and transactions, *among others,* to be outside the ordinary course of trade'' (emphasis added), and then lists three examples, including a sales-based PMS.[94] Accordingly, a determination by Commerce that certain costs of production are not reflective of the ordinary course of trade (*i.e.,* not ''normal in the trade under consideration with respect to merchandise of the same class or kind'') could also result, in the words of the Federal Circuit, ''in situations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or the constructed export price.'' [95] For this reason we have included paragraph (h) in § 351.416, which states that a cost-based PMS may contribute to a PMS that prevents or does not permit a proper comparison of home market or third-country sales prices with export prices or constructed export prices. However, because a cost-based PMS could contribute to a sales-based PMS, which the Federal Circuit acknowledged was possible due to the TPEA amendments to section 771(15) of the Act,[96] that possibility does not logically dictate that Commerce cannot otherwise address costs distorted by a PMS. Nor does the link between sections 773(e) and 771(15)(C) of the Act imply that Commerce's ability to ''use another calculation methodology'' under section 773(e) of the Act when it discovers distorted costs of production is severely curtailed only to situations in which Commerce conducts a second analysis and makes a second determination that the prevention of a proper comparison exists. The statute simply does not require such an extensive and multi-tiered analysis in every case in which Commerce determines the existence of a cost-based PMS.

In addition, the commenters' interpretation conflicts with Congress' intention in adding the cost-based PMS provision in the statute. As explained above, Congress expressed that it intended to give Commerce ''flexibility in calculating a duty that is not based on distorted pricing or costs'' in any situation ''when a PMS exists,'' [97] and Members of Congress expressed the hope that the additions to the Act would give Commerce the ability to address distorted costs incurred by foreign producers who were ''not playing fair.'' [98] The commenters' interpretation of the Act would allow Commerce to address cost distortions only in a very limited subset of cases, contrary to that intent.[99] Furthermore, if Commerce could only make an adjustment after finding a sales-based PMS in every case, it would limit Commerce's flexibility to define what conditions lead to a PMS. That is counter to Congress' intent, as shown through the legislative history of the TPEA, where Members of Congress expressed a desire to give Commerce greater flexibility, instead of limiting its flexibility, in calculating a duty not based on distorted pricing or costs. Commerce disagrees that such an interpretation of the Act is reasonable, as it would lead to a result inconsistent with the very purpose of the addition of the provision.[100] Accordingly, we are not revising the regulations to reflect such an interpretation of the Act.

Finally, we agree that Article 2.2 of the AD Agreement pertains to the ability of administering authorities to address sales-based particular market situations, just as we agree that Article 2.2.1.1 of

[91] *See* section 771(15)(C) of the Act.

[92] *See Hyundai Steel Co.* v. *United States,* 19 F.4th 1346, 1353–54 (Fed. Cir. 2021) (*Hyundai Steel Co.*).

[93] *Id.*

[94] *See* section 771(15) of the Act.

[95] *See Hyundai Steel Co.,* 19 F.4th at 1353–54.

[96] *Id.,* 19 F.4th at 1354.

[97] *See* Senate Finance Committee Report at 37.

[98] *See* Congressional Record-Senate, S2899, S2900 (May 14, 2015)).

[99] Congress has recognized that Commerce may adjust its AD calculations for cost distortions in a few sections of the Act, including Commerce's ability to consider the existence of a cost-distorting PMS in its calculations. For example, section 773(f)(1)(A) of the Act states that in calculating costs of production, costs ''shall normally'' be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting and producing country and ''reasonably reflect the costs associated with the production and sale of the merchandise.'' Commerce's long-standing interpretation of that provision, as affirmed by the Federal Circuit in *Thai Plastic Bags,* has been to adjust a company's reported costs of production if Commerce determines that record evidence does not show that the reported costs ''reasonably reflect'' the actual cost of production. *See Thai Plastic Bags Indus. Co.* v. *United States,* 746 F. 3d 1358, 1363–69 (Fed. Cir. 2014).

In *Thai Plastic Bags,* the Federal Circuit affirmed Commerce's determination that the respondent's reported labor and overhead costs did not ''reasonably reflect'' the company's production costs and held that Commerce's reallocation of the reported costs ''to diminish'' the cost ''distortions'' reflected in the company's books and records was supported by substantial evidence on the record and in accordance with law.

[100] *See Church of the Holy Trinity* v. *United States,* 143 U.S. 457, 459 (1892); and *Public Citizen* v. *U.S. Dep't of Justice,* 491 U.S. 440, 454 (1989) (discouraging an interpretation of a statute which would lead to unreasonable, odd, and absurd results that are inconsistent with the intent of Congress). To the extent that commenters cite language from certain CIT decisions suggesting possible alternative interpretations of the Act, those interpretations were made within the restrictions of limited arguments and specific facts in the cases before the Court. These regulations are the first instance in which Commerce has provided an extensive analysis of the history of the relevant statutory provisions and the Federal Circuit's PMS holdings.

the AD Agreement states that costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records reasonably reflect the costs associated with the production and sale of the product under consideration. Just because one provision of the AD Agreement recognizes that an administering authority may address a PMS which does not permit a proper comparison of prices, does not mean that other types of particular market situations which result in cost distortions cannot also be addressed by administering authorities consistent with members' WTO obligations.

C. Certain language in the proposed § 351.416 required revision for consistency and clarification.

In different claims about various provisions in the proposed regulation, several commenters expressed concerns about word choices and inconsistent language and terms being applied in proposed § 351.416. We have considered those concerns and agree each of the different sections contained certain terminology and phrases that should be revised and clarified. Accordingly, for each section we will describe the significant revisions made from the *Proposed Rule* below.

i. Section 351.416(a)—the introduction of the regulation and definition of PMS.

Revisions:

In revised paragraph (a), Commerce has clarified that we are defining both types of particular market situations. For a sales-based PMS, we have clarified that a PMS can be a PMS that prevents or does not permit a proper comparison of sales prices, as set forth in sections 773(a)(1)(B)(ii)(III) and 773(a)(1)(C)(iii) of the Act. A cost-based PMS is defined as a PMS that contributes to the distortion of the cost of materials and fabrication or other processing of any kind, such that the cost of production of the merchandise subject to an investigation, suspension agreement, or AD order does not accurately reflect the cost of production in the ordinary course of trade, as set forth in section 773(e) of the Act.

In addition, numerous commenters requested that Commerce remove the term ''distinct'' from paragraph (a), (c), (d), and (e), and we agree with that request. The commenters suggested that nothing in the Act requires a market situation to be ''distinct'' from other circumstances or sets of circumstances in other countries, for example, and they fear that courts will misinterpret such language as requiring an additional obligation or analysis. They point out that, just as Commerce explained in the *Proposed Rule* that a market situation need not be ''unique'' or ''excessively narrow in its application'' [101] to be particular, there is also no statutory requirement that a market situation must be ''distinct.'' We understand and share those commenters' concerns and have therefore removed the term ''distinct'' from the final rule.

ii. The evidentiary standard and requirements for filing a PMS allegation § 351.416(b).

Revisions:

In revised paragraph (b) of § 351.416, Commerce has clarified that if a PMS allegation has been made previously in the same proceeding, or in a previous or ongoing different proceeding, the interested party must identify the facts and arguments distinguishable from those provided in the other segment or proceeding. To prevent any confusion, because we have removed the word ''distinct'' in paragraphs (a), (c), and (d) of the regulation, as described above, we have revised the term distinct as used in proposed paragraph (b) to the word ''distinguishable.''

iii. Covering sales-based PMS determinations, including examples of a sales-based PMS and the possible use of constructed value if Commerce determines a sales-based PMS exists.

Revisions:

In revised paragraph (c), Commerce has explained that its analysis is specific to the period of investigation or review and that it will consider both circumstances and sets of circumstances in the home market to determine if a PMS prevents or does not permit a proper comparison of home market prices with export or constructed export prices.

iv. Covering cost-based market situation determinations, including the analysis applied by Commerce, a description of information it normally finds beneficial in making such a determination, and a description of information it finds to be of little value in most cases—§ 351.416(d).

Revisions:

In revised paragraph (d) of § 351.416, Commerce has clarified that a cost-based PMS analysis is specific to a period of investigation or review and that its analysis is conducted in three parts. First, Commerce determines if a circumstance or set of circumstances existed during the period of investigation or review that may have impacted the costs of producing subject merchandise, or costs or prices of inputs into the production of subject merchandise. Second, Commerce considers if the cost of production was distorted and, therefore, did not accurately reflect the costs of production of subject merchandise in the ordinary course of trade during that period of time. Third, Commerce determines if it is more likely than not that the circumstance or set of circumstances at issue contributed to the distortion of the costs of production of subject merchandise. If all three of these factors exist, Commerce will determine the existence of a cost-based PMS.

Furthermore, in a new paragraph (d)(2) of § 351.416, Commerce moved the references to the ''likelihood'' standard from each of the proposed examples in paragraph (g) in the *Proposed Rule* and placed that process of analysis in one section applicable to all cost-based PMS allegations. The final regulation explains that in determining if a circumstance or set of circumstances contributed to the distortion of the costs of subject merchandise, Commerce will weigh the information on the record and determine whether it is more likely than not that the circumstances or set of circumstances at issue contributed to observed cost distortions of subject merchandise during the period of investigation or review. This is consistent with Commerce's standard analysis of many facts and factors in its AD procedures. It is of particular importance to an analysis such as this one in which certain actions or inactions may impact costs of production, but proving a direct cause and effect relationship may be extremely difficult, if not impossible. Accordingly, a weighing of the record information and a determination that a PMS more likely than not contributed to a distortion of costs is the logical standard of analysis and satisfies the intent of Congress in implementing the cost-based PMS provision in the Act.

An additional modification made to paragraph (d) of § 351.416, and described above, is language included in paragraph (d)(3)(v) which states that if Commerce considers an allegation that property (including intellectual property), human rights, labor, or environmental protections in the subject country are weak, ineffective, or nonexistent, then Commerce may determine that it is appropriate to look to the enforcement of such protections in other countries to determine if a cost-based PMS existed during the period of investigation or review. The additional language states that, for purposes of that provision, the Secretary will normally look to cost effects on same or similar merchandise produced in economically comparable countries in analyzing the impact of such protections on the cost

[101] *See Proposed Rule,* 88 FR 29864.

of production. This consideration was always the intention of the agency, but a few commenters expressed concerns that Commerce would consider other countries with very different economies in its analysis. Accordingly, the agency has determined that this additional language should be added to the regulation to clarify that normally Commerce will look to countries with comparable economies in determining the effects of such enforced protections.

In addition, in response to requests from several commenters pertaining to proposed paragraph (d)(2)(ii), we have removed the term ''considerably'' from paragraph (d)(3)(ii) of § 351.416 because, as those commenters suggested, if Commerce will consider reports and documentation that indicate lower prices for significant inputs would likely result from certain governmental actions or inactions, there is no requirement in the Act that those lower prices be ''considerably lower,'' only that those prices not reflect costs or prices in the ordinary course of trade (*i.e.,* that they are distorted).

Next, in paragraph (d)(4) of § 351.416, Commerce has revised the introductory language of proposed paragraph (d)(3) stating that ''it will not be required'' to consider certain information, to an explanation that given the nature of the listed information, even if that information is all correct, that the provision of such information on the record will not preclude Commerce from making a finding of a cost-based PMS. We agree with those who commented that Commerce does not have the authority to ignore record evidence, and the proposed language raised concerns as to Commerce's intentions. However, the purpose of this provision was, and continues to be, to provide guidance that there are sources of information and related arguments which parties have filed and raised with Commerce in the past which, in its experience, generally do not assist Commerce's analysis. For example, in the AD investigation of biodiesel from Argentina, Commerce found a PMS existed, despite acknowledging that the source of the PMS (a government export tax) had been in place for numerous years. Commerce found that it was not ''precluded'' from finding a PMS ''where the distortion at issue has occurred over several years'' and that ''the fact that Argentina's soybean export tax regime has been in place since 2002 does not render its effects on Argentina's domestic soybean prices within the ordinary course of trade.'' [102] That conclusion is now reflected in paragraph (d)(4)(iv). The submission of such information and related arguments in most cases does nothing but distract Commerce and other interested parties from focusing on the information on the record which does assist the analysis. Accordingly, we have included this ''does not preclude'' provision to hopefully benefit all parties in providing guidance as to the information Commerce actually needs.

Lastly, paragraph (d)(4)(iv) of § 351.416 removes general references from proposed paragraph (d)(3)(iv) to historical policies adopted by a government or nongovernmental entities. It now more directly states the existence of the same or similar governmental or nongovernmental actions in the subject country that preceded the period of investigation or review will be of little to no relevance to Commerce's analysis (as discussed in the preceding paragraph). The removed language explaining that the pre-existence of government or industry actions does not make circumstances or sets of circumstances ''market based'' or nullify distortions of costs during a period of investigation or review remains true. However, because that language seemed to create some confusion for the public, it was removed to simplify the example of information that will not preclude the finding of a PMS.

v. Addressing the factors which make a market situation ''particular''—§ 351.416(e).

Revisions:

Paragraph (e) of § 351.416, which addresses factors to consider in determining if a market situation is particular, was revised in this final rule to use language consistent with other provisions in the regulation and was updated to apply equally to both sales-based and cost-based particular market situations. We agree with some of the commenters who expressed concerns that it was illogical to have a provision that defined what particularity meant for one type of PMS but not the other. The final regulation explains that a market situation is particular if it impacts prices or costs for only certain parties or products in the subject country. Further, additional language was added to paragraph (e)(1)(i) that explains clearly that Commerce's analysis does not concern the number of parties or products, but rather whether the market situation impacts only certain parties and products, as opposed to the general population of parties or products in the subject country.

vi. Addressing Commerce's ability to adjust, or not adjust, its calculation for a cost-based PMS—§ 351.416(f)

Revisions:

Paragraph (f) of § 351.416 was significantly revised to provide greater clarity and explanation of Commerce's authority, once it finds that a cost-based PMS exists, to address that PMS in its calculations. Notably, the Act simply states in section 773(e) that Commerce ''may use another calculation methodology under this subtitle or any other calculation methodology.'' Accordingly, the revised paragraph (f) of § 351.416, which now clarifies that it only applies to particular market situations under paragraphs (d) and (e), is divided into three separate provisions. The first states generally that if Commerce determines that a PMS exists in the subject country which has contributed to a distortion in the cost of materials and fabrication or other processing, such that those costs do not accurately reflect the cost of production of subject merchandise in the ordinary course of trade, Commerce may adjust for those distortions in its cost of production calculations.

The second provision explains that if Commerce cannot precisely quantify the distortions in the cost of production caused by the PMS after consideration of the information on the record, it may use any reasonable methodology to adjust its calculations to address those distortions based on that record information. This provision was expanded from the *Proposed Rule* to address concerns raised by commenters that Commerce would ignore available and relevant record information and make adjustments to its calculations using information outside of the record unrelated to that information, which was never Commerce's intention.

The third provision was added to reflect that even if Commerce determines that a PMS exists, it may also determine that an adjustment to its cost of production calculations is inappropriate based on record information. There was language in most of the proposed examples in § 351.416(g) of the *Proposed Rule* which stated that Commerce would only find a PMS existed if it could adjust for distortions in its calculations of the cost of production. However, that was not an accurate reflection of Commerce's analysis or practice, as pointed out by some commenters. In fact, Commerce may determine that a cost-based PMS exists, but not make an adjustment because it determines that an

[102] *See Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and final Affirmative Determination of Critical Circumstances, in Part,* 83 FR 8837 (March 1, 2018) (*Biodiesel from Argentina*), and accompanying IDM at Comment 3.

adjustment is not appropriate, necessary, or warranted. Accordingly, we removed that language from the examples of paragraph (g) and imported the concept to paragraph (f), with additional explanation to provide clarity. Specifically, the final rule provides guidance on factors which Commerce may consider in determining if an adjustment is appropriate: (1) whether the cost distortion is already sufficiently addressed in its calculations in accordance with another statutory provision, such as the transactions disregarded and major input rules of sections 773(f)(2) and (3) of the Act; (2) whether a reasonable method for quantifying an adjustment to the calculations is absent from the record (*e.g.,* no interested party has proposed a methodology to address the cost-based PMS which would work in Commerce's calculations); and (3) whether information on the record suggests that the application of an adjustment to Commerce's calculations would otherwise be unreasonable. We believe that describing such factors in the regulations will better inform interested parties on the type of information Commerce requires to make not only a cost-based PMS determination, but also a separate determination as to whether an adjustment can, or should, be made to its cost of production calculations.

vii. Providing examples of cost-based particular market situations—§ 351.416(g).

Revisions:

As explained above, Commerce moved references to the ''likelihood,'' weighing-of-evidence analysis, and its ability to adjust cost calculations from the § 351.416(g) examples provided in the *Proposed Rule* to other provisions of the regulation.

Otherwise, most revisions to the text of the various examples were implemented to bring the language of those provisions into conformity with language used in other parts of § 351.416. For instance, each example now mentions that a determination of a cost-based PMS is based on record information and is specific to the period of investigation or review being examined by the agency. These changes were implemented in this provision, as they were in other provisions, in response to comments and concerns we received on this issue from multiple commenters and to provide greater clarity as to Commerce's cost-based PMS analysis.

One of the listed examples, paragraph (g)(9), was the source of concern for several commenters, who stated that they believed that the language of the provision was too broad and could open the door to other governments making costs adjustments to the AD calculations of U.S. exporters based on U.S. domestic policies only tangentially related to business decisions, costs, or prices. They cited U.S. industrial policies, supply chain measures, greenhouse gas emission reduction programs, and trade restrictions pertaining to Russia's invasion of Ukraine as examples that reflect government actions that may ''otherwise influence'' the production of merchandise not only in the United States, using a term Commerce included in the proposed paragraph (g)(9) example. Upon consideration of those comments, we agree that the proposed paragraph (g)(9) example was too broadly written, and we have restricted it to only three mandated government requirements—the use of a certain percentage of domestic-manufactured inputs, the sharing or use of certain intellectual property or production processes, or the formation of certain business relationships with other entities to produce subject merchandise or a significant input into the production of subject merchandise. We believe this new language reflects the specific examples of potential cost-distorting circumstances which Commerce sought to address in the regulation.

Furthermore, in the proposed examples where Commerce had referenced ''state-owned enterprises,'' we have removed that term, as the focus of Commerce's examples is more general than just that situation, focused not on the type of government entity, but on whether a government, government-controlled entity, or other public entity has taken actions, or not taken certain actions, that result in distorted costs of production. One party requested that Commerce define the term ''state-owned enterprise,'' but because that term is now removed from this regulation, there is no reason to define that term at this time. We have, however, added greater context to the entire provision and provided further description of the actions intended to be addressed by paragraph (g)(12). Accordingly, the provision now explains that a cost-based PMS may exist when ''nongovernmental entities take actions'' which the Secretary concludes can lead to cost distortions. It states that such actions ''include, but are not limited to, the formation of business relationships between one or more producers of subject merchandise and suppliers of significant inputs to the production of subject merchandise, including mutually-beneficial strategic alliances or noncompetitive arrangements, as well as sales by third-country exporters of significant inputs into the subject country'' for dumped prices. We believe that this revised description of the example set forth in paragraph (g)(12) better illustrates the type of nongovernmental actions that can become a PMS which distorts a producer's costs of production.

viii. Explaining that a cost-based PMS may contribute to a sales-based PMS—§ 351.416(h).

Revisions:

The only revisions Commerce made to § 351.416(h) were the same revisions it made to other provisions: (1) bringing the language into conformity with the Act's terminology; (2) explaining that Commerce's determinations are based on record information; and (3) emphasizing that its cost-based and price-based PMS determinations are specific to the period of investigation or review at issue. Commerce received many comments on this provision expressing very different perceptions and claims on Commerce's authority in this regard. As explained above, some commenters suggested that Commerce could only make adjustments for cost-based PMS determinations that it determined based on record evidence contributed to a sales-based PMS. However, other commenters claimed that that regardless of record evidence, Commerce should always presume that a cost-based PMS causes a sales-based PMS. In addition, Commerce received a third group of comments that suggested that Commerce has no authority to ever determine that a cost-based PMS can contribute to a sales-based PMS.

For the reasons explained above, Commerce has concluded that the Act does not require that Commerce must first determine a sales-based PMS exists before it can make adjustments to its calculations for a cost-based PMS. It also does not restrict Commerce from considering that a cost-based PMS may contribute to a sales-based PMS, and in fact, as pointed out by the Federal Circuit in *Hyundai Steel Co.,* the ''TPEA amendment to section 1677(15) linked the constructed value subsection with 'situations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or the constructed export price.' '' [103] Accordingly, it is reasonable to conclude that Congress intended to grant Commerce the ability to consider cost-based particular market situations in determining if a sales-based PMS exists. However, despite that ability and

[103] *See Hyundai Steel Co.,* 19 F.4th 1346, 1353–54.

authority to consider such information, we continue to see no reason to presume that the existence of a cost-based PMS always results in a sales-based PMS, nor that a cost-based PMS cannot exist unless it also creates a sales-based PMS. That does not reflect Commerce's experience in administering and determining the existence of cost-based and sales-based particular market situations. For these reasons, we have made no further revisions to proposed § 351.416(h).

D. Additional comments and requests specific to particular paragraphs of proposed § 351.416 but not directly incorporated into the final rule.

As explained above, Commerce received 53 comments from different governments, organizations, importers, producers, and exporters on many different provisions in the proposed regulations, and in several of those comments, commenters proposed changes or requested that Commerce clarify further certain points in the preamble to the final rule. Commerce provided its rationale for those changes which we incorporated into the revised § 351.416 above. For the remainder of suggested edits which we did not incorporate, and in response to requests that we clarify further certain points in the preamble, we address those comments below.

i. Comments on the evidentiary standard of § 351.416(b).

Several commenters commented on the evidentiary standard set forth in proposed § 351.416(b), which stated that interested parties must include with their PMS allegation ''relevant information reasonably available to that interested party supporting the claim.'' [104] Various commenters supported, opposed, or sought further modification of the allegation evidentiary standard. Those in support of the standard explained that it reasonably reflects that petitioners sometimes have only limited access to information about a PMS and, therefore, a ''reasonably available'' standard is a realistic standard to expect of parties making an allegation. The purpose of a PMS examination, in the context of an investigation or review, is ultimately to gather more information about the alleged circumstance or set of circumstances allegedly distorting prices or costs, and to determine if in fact a PMS actually exists in the first place. An increased and unrealistic standard would make it more difficult for Commerce to initiate a PMS examination, and possibly prevent Commerce from addressing cost distortions as intended by Congress in placing the cost-based PMS in the Act.

However, two commenters objected to the standard, claiming that Commerce's proposed language lowers the evidentiary threshold to allege the existence of a PMS from its current practice. Section 351.404, which covers the selection of the market to be used as the basis for normal value, provides at § 351.404(c)(2)(i) that Commerce may ''decline to calculate normal value in a particular market under paragraph (c)(1) of this section'' if the Secretary determines that ''a particular market situation exists that does not permit a proper comparison with the export price or constructed export price.'' [105] In the preamble to the AD regulations implementing that sales-based PMS provision, Commerce explained that the ''party alleging the existence'' of a PMS ''has the burden of demonstrating that there is a reasonable basis for believing'' that a PMS exists.[106] The commenters suggested that a ''reasonable basis for believing'' is a higher standard than ''relevant information reasonably available to that interested party supporting the claim,'' and because § 351.416(b) applies equally to both sales-based and cost-based PMS allegations, Commerce's proposed regulation lowers the PMS allegation standard from its past practice.

Those commenters expressed concerns that because Commerce does not provide further guidance on the term ''reasonably available,'' petitioners could abuse the vague terminology, alleging whatever they wanted on a case-by-case basis. They also expressed concerns that Commerce could likewise abuse the terminology by arbitrarily determining what is ''reasonable'' in each case as it determines appropriate. They expressed concerns that Commerce's current ''reasonable basis'' standard is inconsistent with the statutory presumption that Commerce uses a producer's reported costs of production in its calculations, absent actual probative evidence that cost distortions may exist in those books and records. They commented that by allegedly lowering the evidentiary threshold using vague terminology, Commerce is placing unnecessary burdens on respondents to prove in each case that no PMS exists and requiring Commerce to expend unnecessary resources on addressing incomplete allegations.

A third group of commenters requested that Commerce revise the described evidentiary standard in § 351.416(b) to always permit parties making a cost-based PMS allegation to solely rely on cost-based PMS determinations in a previous segment of the same proceeding under a rebuttable presumption of the ongoing existence of a cost-based PMS. In the *Proposed Rule,* Commerce explained that it would not adopt a rebuttable presumption to apply to future proceedings once it had determined the existence of a cost-based PMS in one segment of a proceeding, as requested by several commenters in response to the *PMS ANPR,* because unlike a non-market economy designation (which commenters had used as an example), which applies to an entire economy, a cost-based PMS is based on a circumstance or set of circumstances that may or may not be ''particular to certain products or individuals in the subsequent years.'' [107] Some commenters continued to urge Commerce to reconsider this decision, commenting that frequently Commerce has found cost-based particular market situations to exist in subsequent segments of a proceeding. They also pointed out that it is not uncommon, even in the context of proceedings that do not involve the non-market economy entity, for Commerce to rely on previous distortion findings in subsequent proceedings unless parties rebut those earlier determinations with new evidence, such as earlier agency findings that certain world market prices are distorted, for example in the selection of benchmarking prices for a less than adequate remuneration analysis, pursuant to § 351.511(a)(2)(iii). They suggested that, likewise, it would be reasonable to allow those alleging a PMS which has already been determined to distort costs in a previous segment of the proceeding, to rely solely on that previous determination in their PMS allegation submissions under § 351.416(b). Additionally, they suggested that such a presumption would be lawful and fair because respondents could still respond with rebuttal factual information in the investigation or review. Further, they commented that such a presumption would decrease administrative burdens by not requiring Commerce to do an extensive PMS cost-based analysis in every adjacent 12-month period.

Finally, another commenter essentially advocated for the opposite of those requesting a rebuttable presumption that a cost-based PMS exists in subsequent segments of a

[104] *See Proposed Rule,* 88 FR 29875.

[105] *See* § 351.404(c)(2)(i).

[106] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27295, 27357 (May 19, 1997) (*1997 Preamble*).

[107] *See Proposed Rule,* 88 FR 29865.

proceeding. That commenter requested that Commerce clarify that cost-distortion findings are case-specific and suggested that Commerce should never rely on its previous findings of cost-distortions in previous segments of a proceeding, as facts such as prices and costs are constantly changing and there is no guarantee that a cost-based PMS found to exist in a particular period of investigation or review will continue to exist in another. Such decisions, the commenter stated, are to be made by Commerce based solely on the facts of the case before it.

Commerce's Response:

We have not revised the evidentiary standard as set forth in the *Proposed Rule* in § 351.416(b) in the final rule as requested by the commenters. First, we disagree with the commenters who expressed concerns that Commerce has somehow lowered its evidentiary standard from ''a reasonable basis for believing'' to something less stringent. While those commenters focused on the term ''reasonably available,'' we believe the more important term in the clause at issue is ''supporting the claim.'' If a PMS allegation is made with no evidence ''supporting the claim,'' Commerce will not initiate on that PMS allegation. It is Commerce's current practice to consider if the information accompanying a PMS allegation is sufficient to support the claim of a PMS. If Commerce determines that the information provided does not adequately support the claim, but that the alleging party has the ability to retrieve certain additional evidence to further support the allegation, Commerce may request that the party submit the additional information before the agency determines to initiate, or not initiate, a PMS examination. We believe that standard is fully consistent with the ''reasonable basis for believing'' standard expressed in the preamble to § 351.404(c)(2).[108]

Furthermore, Commerce frequently uses a ''reasonably available'' standard in its AD and CVD proceedings; thus, the usage of such a standard is fully consistent with Commerce's normal practice. For example, in investigations, Congress provides in the Act that a petition must contain information ''reasonably available to the petitioner'' supporting its allegations.[109] Furthermore, in Commerce's regulations for investigations, scope inquiries and circumvention inquiries, petitioners, applicants and requesters are all required to provide ''reasonably available'' information in their submissions.[110] Thus, we disagree that the standard set forth in § 351.416(b) is unreasonable and have maintained that standard in the final rule.

In addition, we are not implementing a rebuttable presumption in our regulations for subsequent segments in the same proceeding at this time. We agree with the commenter that pointed out that facts do frequently change in a proceeding from year to year, such as prices and costs for certain inputs, costs for subject merchandise, the application of government programs, and nongovernmental actions that may distort costs, and that Commerce must make both sales-based and cost-based PMS determinations on a segment-to-segment basis. On the other hand, we also agree with the commenters that noted that Commerce has found cost-based particular market situations to exist in sequential segments of the same proceeding, and that in a given case, Commerce might conclude that previous cost-based PMS determinations could form part of the ''relevant information reasonably available to that interested party supporting the claim'' standard for purposes of initiating a cost-based PMS examination. However, given the evolving circumstances in sequential cases across AD orders, we have concluded that such a determination is best left to be determined by Commerce on a case-by-case basis and have determined not to codify such a rebuttable presumption in § 351.416(b).

ii. Comments on the second sentence of § 351.416(b) and Commerce's authority to self-initiate a PMS examination.

One commenter suggested that Commerce should delete the requirement in the second sentence of § 351.416(b) that if a similar PMS was alleged in a previous segment of the same proceeding, the alleging party must identify in the submission the facts and arguments which can be distinguished from those provided in the previous segment. The commenter stated that this provision does not provide certainty regarding what will be required of alleging parties and could increase Commerce's administrative burden. Furthermore, the commenter interpreted this requirement to unreasonably force an alleging party to identify the bases on which an opposing party could build an argument against finding a PMS, based on the distinguishing features from the previous segment, which the commenter suggested is a departure from other allegations administered by Commerce.

Three other commenters requested that Commerce reaffirm its authority to find a PMS in the context of an investigation or administrative review, *sua sponte,* without an allegation by other parties, when information on the record supports initiation, as affirmed by the CIT for a sales-based PMS determination.[111]

Commerce's Response:

We have not removed the requirement that parties submitting an allegation similar to one made in a previous or ongoing segment of a proceeding must identify the facts and arguments in the submission which are distinguishable from those provided in the other segment, and in fact, we have modified it to cover similar allegations in other proceedings as well. As we stated in the *Proposed Rule,* it is a burden on both the agency and other parties when an allegation is submitted in a segment and the alleging party does not indicate where the facts or claims diverge from previous allegations submitted to Commerce.[112] To the extent that the commenter believes it weakens its allegation to point out distinguishing features from its previous allegations, if an allegation cannot stand up to the evidentiary requirements set forth in the regulation, then that fact suggests the allegation itself is weak.

With respect to Commerce's ability to examine, and possibly determine, the existence of a PMS without an allegation, we agree with the commenters and the CIT that there are no statutory restrictions on Commerce's ability to conduct such an examination *sua sponte* in the context of its administrative proceedings. We do not believe that such an unrestricted authority must be codified in the regulation, however.

iii. Comments on the examples of a sales-based PMS in § 351.416(c)(1).

Commerce received multiple comments on the examples of a sales-based PMS set forth in § 351.416(c)(1)(i) through (iv).

a. Comments on past practice and the examples in § 351.416(c)(1).

[108] *See 1997 Preamble,* 62 FR 27357.

[109] *See* sections 702(b)(1) and 732(b)(1) of the Act.

[110] *See* §§ 351.202(b), 351.225(c), and 351.226(c).

[111] In referencing the CIT, the commenters cite *Atar, S.r.l.* v. *United States,* 33 CIT 658, 670 (June 5, 2009) (finding that ''{t}he general shortcoming in plaintiff's argument is that neither the statute nor the regulations prohibit Commerce from determining, even absent an allegation, that a third-country market is affected by a particular market situation. Moreover, the Preamble language, in stating that Commerce ''typically'' proceeds only upon a timely allegation, does not state or imply that Commerce intended to confine its own discretion such that it could not act *sua sponte*'' (citing the *2017 Preamble,* 62 FR 27357)) and (''{n}or do the statute or regulations require Commerce to provide a ''substitute'' for such an allegation.'').

[112] *See Proposed Rule,* 88 FR 29862.

Several commenters requested that Commerce clarify that those examples are intended to codify past agency practice and do not reflect a change in practice.

Commerce's Response:

The examples are intended to illustrate a circumstance or set of circumstances that may prevent or not permit a proper comparison of prices in the home market or a third-country market and the export price or constructed export price. As with the examples of a cost PMS listed under paragraph (g), the examples under paragraph (c)(1) are not entirely a codification of past practice, but, to some extent, indicate the type of circumstance or circumstances Commerce anticipates might result in the existence of a PMS. For example, Commerce has found a PMS as the result of direct government control over the pricing of home market sales.[113] Moreover, ''government control over pricing to an extent that home market prices cannot be considered competitively set'' is a specific example of a possible PMS identified by the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA).[114]

The other examples of a sales-based PMS listed in paragraph (c)(1), while not taken from past practice, are not inconsistent with past practice and do not reflect a change to what Commerce considers to be a sales-based PMS. Rather, each example illustrates a circumstance in which comparison market sales might not provide a proper comparison to the export price or constructed export price.

b. Comments on the term ''may'' in § 351.416(c)(1).

One commenter expressed its appreciation for Commerce setting forth examples, stating that it will assist Commerce and interested parties in quickly identifying sales-based particular market situations in future cases with similar facts, while another commenter suggested that Commerce should state that the examples set forth in § 351.416(c)(1)(i) through (iv) ''will'' prevent or not permit a proper comparison of prices, not ''may'' prevent a proper comparison of prices, as was set forth in the *Proposed Rule.*

Commerce's Response:

In response to the first of the comments, we agree that by providing examples of past sales-based particular market situations, we hope to provide clarification as to the types of circumstances or sets of circumstances that could prevent or not permit a proper comparison of prices, but we disagree that such circumstances ''will'' prevent or not permit a proper comparison of prices in every case. Every PMS determination is based upon the information on the record of the segment of the proceeding before Commerce. Accordingly, we have not modified the language from ''may'' to ''will,'' as suggested.

c. Comments on the ''normalcy'' of certain government actions described in § 351.416(c)(1).

In addition, several commenters expressed concerns about the specific examples set forth in the regulation, commenting that export taxes, export limitations, anticompetitive regulations that confer unique status on favored producers or create barriers to new entrants to an industry, and direct government control over pricing of subject merchandise can all be part of the normal ''conditions and practices'' applied by governments, producers, and exporters in the ordinary course of trade under section 771(15) of the Act. They expressed concerns that addressing ''anticompetitive regulations'' in this manner is inconsistent with the intent of the AD law and that ''direct government control over pricing'' may not necessarily lead to distortions in prices.

They also suggested that these examples are already adequately addressed through Commerce's non-market economy methodology, and that Commerce would be acting inconsistently with the Act in addressing such examples using a sales-based PMS analysis.

Other commenters suggested that to the extent each of these examples involve government policies or broad economic phenomena, the use of such examples in the regulation is inconsistent with the ''original intent'' of the AD Agreement.

Commerce's Response:

There is no support for the allegations that the examples listed as possible sales-based particular market situations in § 351.416(c)(1)(i) through (iv) are inconsistent with Commerce's obligations under the Act or the United States' obligations under the AD Agreement. Further, Commerce only applies a PMS analysis to market economy countries and, therefore, there is no merit to the suggestion that the examples raised would be addressed through Commerce's non-market economy methodology. Additionally, as noted above, the examples are illustrative and not exhaustive, and in every case, Commerce still must determine if the facts on the record of a given investigation or review before it support a finding of a sales-based PMS. The examples provided could be particular market situations if the alleged circumstances are shown to distort prices on the record of an investigation or review, and are intended to provide the public with guidance, but a PMS determination is one anchored in record evidence, and Commerce will not determine the existence of a PMS without a thorough analysis. Further, to the extent comparability between comparison market prices and export or constructed export prices can be addressed through another section of the Act (*e.g.,* price adjustments to normal value under section 773(a)(6) of the Act), Commerce may determine an adjustment for the sales-based PMS is not appropriate. Accordingly, we have made no changes to the examples set forth in the *Proposed Rule.*

iv. Comments on the use of constructed value in § 351.416(c)(3).

Section 351.416(c)(3) states that if Commerce determines the existence of a sales-based PMS, it may conclude that it is necessary to determine normal value by constructing a value in accordance with section 773(e) of the Act and § 351.405 of Commerce's regulations. Certain commenters indicated their support for this provision, stating that it is fully consistent with section 773(a)(4) of the Act, while others requested that Commerce clarify that sales prices will only be disregarded when a sales-based PMS is shown by record evidence to prevent proper comparisons of prices, as required by both the Act and the AD Agreement.

In addition, some commenters requested that Commerce ''make clear'' that it will seek to use home or third-country sales as the basis of normal value to the extent possible, including using third-country sales where a home market may be disqualified due to a PMS.

Commerce's Response:

Commerce agrees that § 351.416(c)(3), as proposed, is consistent with section 773(a)(4) of the Act and agrees that sales will only be disregarded when the record evidence reflects that a PMS prevented or did not permit a proper comparison of sales prices in the home market or third-country market with export prices or constructed export prices during the period of investigation or review. However, the conclusion that the PMS prevents or does not permit a proper comparison of comparison

[113] *See Biodiesel from Argentina* IDM at Comment 2.

[114] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, Vol. 1 (1994), at 822.

market prices with export prices or constructed export prices will be reached when the existence of a PMS is demonstrated. The question is whether particular market circumstances prevent comparison market prices from serving as the basis of ''normal value'' for purposes of comparison with export or constructed export sales, not the extent to which the PMS may affect comparison market prices or whether the PMS affects both comparison market and export market prices evenly. Thus, there is no need for additional analysis to determine that comparison market sales cannot provide the basis for a proper comparison once they are determined to be outside the ordinary course of trade via an affirmative PMS finding.

In response to the request that Commerce codify a preference for the use of third-country sales over constructed value for determining normal value when home market sales are deemed outside the ordinary course of trade and unusable, we note that the *Proposed Rule* did not address Commerce's decision-making analysis in determining normal value when Commerce concludes that no home market sales were made in the ordinary course of trade during the investigation or review period. We continue to determine that no such analysis is necessary in the final rule.

v. Comments on § 351.416(d)(1) as it applies to a cost-based market situation.

As explained above, Commerce revised § 351.416(d) in response to many comments received on the provision. There were some comments, however, with which we disagreed and did not incorporate changes into the regulation. For example, two commenters expressed concerns with § 351.416(d) in its entirety and called for its removal, arguing that it reverses the statutory burden of proof and requires exporters to demonstrate that a cost-based PMS does not exist rather than requiring those alleging the PMS to prove that it exists based on record evidence. Another commenter suggested that Commerce should remove all references to ''accurately reflect the cost of production'' throughout § 351.416(d), including the header and § 351.416(d)(1)(ii), and replace it with ''reasonably reflects the cost of production,'' because the commenter expressed concerns that the term ''accurately reflect'' suggests a standard of precision which is unrealistic and inconsistent with Commerce's emphasis in the draft regulation that it need not quantify with precision the distortions caused by a cost-based PMS.

In addition, two commenters suggested that section 733(e)(1) of the Act requires that each cost or price distortion finding be respondent-specific and unique to the costs paid for inputs compared to what Commerce deems to be the amount that would have been paid in the ordinary course of trade (*i.e.,* absent the PMS). They suggested that in investigations or reviews in which Commerce determines the existence of a cost-based PMS, the regulation should indicate that Commerce will determine on a transaction-by-transaction analysis whether reported costs exceeded, or were exceeded by, the undistorted cost of an input. For those transactions in which the reported costs exceed distorted costs, those commenters suggested that Commerce should not apply a PMS adjustment that covers those transactions.

Commerce's Response:

We disagree with the commenters who expressed concerns that the regulation ''reverses'' the burden of proof. After a party makes their allegation of a sales-based or cost-based PMS, Commerce still must determine on the record if the evidence supports such a claim. Commerce may issue questionnaires, will consider comments from all of the interested parties, and weigh the evidence on the record to determine if a PMS exists. The regulation provides additional guidance on examples and factors Commerce normally will consider or find less helpful, but in no way does it reverse any burden of proof.

Furthermore, we also have elected not to remove the term ''accurately reflect'' from the regulation. The language of section 773(e) of the Act specifically refers to a finding 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.'' If costs are distorted, they do not accurately reflect the cost of production in the ordinary course of trade—no more and no less. Commerce does not interpret the use of that phrase to mandate an overly burdensome level of proof for interested parties and does not interpret the phrase to mean that cost distortions must be precisely quantified. Indeed, as explained in the *Proposed Rule,* the Federal Circuit has already explicitly held that Commerce is not required to precisely quantify a distortion in costs by the PMS to find the existence of a PMS.[115] The regulation is codifying Commerce's PMS practice to assist in the administration and enforcement of the Act. We do agree, however, that if the burden of proof is interpreted to be too restrictive, Congress' intention that Commerce effectively address cost-based particular market situations in AD investigations and reviews would be greatly undermined.

Finally, there is no language in the Act that requires Commerce to determine on a transaction-by-transaction, or a company-by-company, basis if reported costs exceeded undistorted costs during the period of investigation or review. Accordingly, we have not incorporated into the regulation the suggestion that a transaction-by-transaction analysis of distorted costs is required in analyzing a cost-based PMS and implementing an adjustment under paragraph (f).

vi. Comments on Commerce's proposed analysis that after weighing all the information on the record, Commerce will determine if it is more likely than not that a market situation contributed to a distortion in the cost of production.

As explained above, Commerce has determined to remove references to the analysis which it will conduct in weighing evidence of an alleged market situation and determining if that circumstance or set of circumstances contributed to the distortion in the cost of production of subject merchandise during the period of investigation or review in § 351.416(g) and various other parts of the regulation. Instead, it will address that analysis solely in § 351.416 in the new paragraph (d)(2). The new provision states that Commerce will determine if a market situation existed during the relevant period by determining whether it is more likely than not that the circumstance or set of circumstances contributed to the distortions of cost of production based on record information.

In the *Proposed Rule,* Commerce explained that it had received comments in response to the *PMS ANPR* arguing that Commerce must prove through a direct ''cause and effect'' standard that a market situation caused cost distortions, while other comments suggested that Commerce should just presume that all potential particular market situations contribute to cost distortions.[116] Commerce explained that a direct ''cause and effect'' test would not be realistic or appropriate because sometimes the information to directly tie price and cost changes to external factors might not be publicly available, or the nature of the market situation

[115] *See Proposed Rule,* 88 FR 29863 (citing *NEXTEEL Co., Ltd.* v. *United States,* 28 F.4th 1226, 1234 (Fed. Cir. 2022) (*NEXTEEL*)).

[116] *Id.,* 88 FR 29866.

(*e.g.,* the existence of slave labor or domestic content requirements) might be such that although the impact might be demonstrated by the weight of the evidence on the record, a direct and traceable ''cause and effect'' standard simply would be unattainable and could not be administered.[117] However, Commerce also determined it could not presume all potential cost based market situations had an impact on costs or prices. As Commerce explained, a PMS determination is a ''fact-intensive'' analysis and a circumstance or set of circumstances might distort costs in one case but not in another. Accordingly, Commerce determined that ''on a case-by-case basis'' it would consider ''all relevant information on the record pertaining to an alleged cost-based PMS and determine whether it is more likely than not that the alleged'' market situation contributed to the distortions of prices or costs in the subject country.[118] We continue to believe that is the only reasonable analysis available to the agency in light of the realities of market situations that might contribute to distorted costs, as shown through the examples in § 351.416(g), and have therefore codified that standard in the regulations.

Despite Commerce's explanation in the *Proposed Rule,* certain commenters suggested that the term ''such that'' in the statutory language requires that when Commerce weighs the evidence on the record, it cannot make a determination on the basis of the likelihood of a market situation contributing to the distortion of costs and may only make a determination on the basis of a direct ''cause and effect'' or ''pass-through'' analysis. In other words, they suggest that by using the term ''such that,'' Congress expected that Commerce would only make an adjustment to its calculations if there was evidence that a circumstance or set of circumstances could be directly traced to a distortion of costs of production.

To the extent that such an interpretation of the statute means that Commerce might not be able to address certain market situations that were likely to be contributing to the distortion of costs of production, because they were not directly tied to specific cost distortions, some commenters suggested that this outcome was reasonable. They suggested that a cost-based PMS determination, and an adjustment pursuant to that determination, was intended by Congress to be an exception to the use of an entity's actual, recorded costs of production and, therefore, was also intended by Congress to be a rarely-used trade remedy. They expressed concerns that Commerce's use of a ''likelihood'' standard is inconsistent with that intention, as is the inclusion of many of the examples of a potential cost-based PMS in proposed § 351.416(g), which they suggest do not rise to the standard of a rare or exceptional circumstance or set of circumstances that are the direct cause of distortions in the cost of production. Still, another commenter expressed concerns that Commerce's use of a ''likelihood'' analysis in weighing the evidence on the record not only goes beyond the intentions of Congress in the statute, but also is such a broad abuse of its authority that it is in violation of the nondelegation doctrine of Article 1, Section 1 of the U.S. Constitution. That commenter noted that the CIT in *Jilin Forest Industry* [119] recently held that agencies cannot willfully expand their powers through continuous self-empowerment. The commenter argues that through its use of a likelihood standard in the proposed regulations, Commerce engaged in self-empowerment in the *Proposed Rule* in violation of the nondelegation doctrine.

In advocating for the ''cause-and-effect'' or ''pass-through'' standard, some commenters pointed to a statement in *NEXTEEL,*[120] where the Federal Circuit faulted Commerce for not providing sufficient evidence on the record about a countervailable subsidy, and for not showing that the subsidies ''affected the price of the input'' to the extent that they ''did 'not accurately reflect the cost of production in the ordinary course of trade.' '' [121] In the Federal Circuit's analysis, it pointed out that Commerce had neither made a ''finding that any subsidies were passed through to the prices of {hot-rolled coil}'' or ''that they affected Korean {oil country tubular goods (OCTG)} producers any more than OCTG producers elsewhere.'' [122] On the basis of that language, the commenters suggested that Commerce is required to use a ''pass-through'' analysis in every cost-based PMS analysis.

Furthermore, two more commenters expressed concerns that the likelihood standard is too speculative, and that the use of such a standard in weighing record evidence would result in PMS determinations unsupported by record evidence.

Other commenters expressed their support for Commerce's use of a likelihood standard, arguing that Commerce's proposal is administrable and consistent with Congress's intent to effectively address particular market situations that contribute to the distortion of costs of production. They also expressed their support for Commerce's interpretation of the Federal Circuit's holding in *NEXTEEL* articulated in the *Proposed Rule,* stating that the Federal Circuit did not mandate a ''cause-and-effect'' or ''pass-through'' requirement for subsidies or other market situations.

Commerce's Response:

Congress amended the Act in 2015 to allow Commerce to consider cost-based particular market situations in its proceedings to effectively address what Congress perceived to be unfair use of distorted costs by foreign entities in producing subject merchandise. We disagree that the statute shows that Congress intended for Commerce to consider cost-based PMS allegations only rarely, just as we would disagree that the statute shows that Congress intended for Commerce to consider such allegations in every AD investigation or review. As reflected in § 351.416(b), Commerce will consider a PMS allegation if an interested party submits a timely allegation as to the existence of a PMS along with information that supports the claim. In addition, if record information before Commerce in an AD investigation or review suggests the existence of a cost-based PMS, Commerce will conduct a cost-based PMS analysis in that segment of the proceeding on that basis. Such a consideration is not tied to any concept of rareness or frequency. Accordingly, we find no merit in the suggestion that Commerce should not use a likelihood standard because Congress intended for a cost-based PMS analysis and adjustment to be rarely applied.

To be clear, under § 351.416(d)(2), in determining whether a cost-based PMS exists that has contributed to distortions in costs of production, Commerce will weigh the record evidence and make a determination on that basis. Commerce will not make a determination that a cost-based PMS ''may or may not'' exist. Rather, Commerce will make a determination that a cost-based PMS 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

[117] *Id.*

[118] *Id.*

[119] *See Jilin Forst Industry Jinqiao Flooring Group Co. Ltd.* v. *United States,* Slip Op. 23–14 (CIT February 9, 2023) (*Jilin Forest Industry*), at 33–34 and 36.

[120] *See NEXTEEL,* 28 F.4th at 1235.

[121] *See Proposed Rule,* 88 FR 29866 (citing *NEXTEEL,* 28 F.4th at 1235).

[122] *Id.*

course of trade,'' [123] consistent with the language of section 773(e) of the Act or it will find that there is insufficient evidence on the record to make such a finding.

The term ''such that'' is ''used to express purpose or result.'' [124] Incorporating that definition into the statutory language, Commerce will determine if there is sufficient record information to find that, as a result of the cost-based PMS, there were distortions to the costs of production. The PMS does not have to be the only circumstance or set of circumstances contributing to a distortion in costs, but merely one of the circumstances making such a contribution. The key is that Commerce will determine if it is likely, that the circumstance or set of circumstances at issue contributed to distortions in the cost of production, and if it did, Commerce will also determine whether or not it is appropriate to adjust its AD calculations for that PMS. Such an analysis and determination are fully consistent with the agency's obligations and authority under the Act. It is a weighing exercise delegated by Congress to Commerce as the administrator of the AD law and, therefore, we reject the argument that applying a rational and reasonable ''likelihood'' test in this capacity is a violation of the nondelegation doctrine of the U.S. Constitution.

Despite the claims of several of the commenters, the Act does not address the methodology or analysis Commerce must conduct in reaching such a conclusion. Indeed, the Act is generally silent on the analysis or methodology to be employed by Commerce in making all of its evidence-based determinations in the Act. As the administrator of the AD law, it is Commerce's authority and responsibility to determine the appropriate methodology or analysis to use in reaching such a determination. We have determined to codify in the regulation Commerce's ''likelihood'' analysis because we appreciate that some commenters have suggested that we should just presume causality, while others have suggested that causality must be traced through from beginning to end and shown in granular detail. For the reasons set forth in the *Proposed Rule,* we reject both of those options and conclude that the use of a ''more likely than not'' standard is appropriate.[125]

Furthermore, for the reasons explained in the *Proposed Rule,* we disagree that the Federal Circuit mandated that Commerce apply a ''pass-through'' analysis when addressing a cost-distorting subsidy, or any other type of cost-based PMS for that matter, in *NEXTEEL.*[126] The Federal Circuit was not faced with this issue, and the cited language was provided to give examples of information which Commerce could have provided, but did not, in proving that the existence of a subsidy distorted costs in that case.[127] We do not interpret the Federal Circuit's language in *NEXTEEL* to direct Commerce to incorporate a particular methodology or analysis across the board in determining if a PMS has contributed to the distortion of costs of production.

Indeed, given the many types of cost-based particular market situations which might distort costs of production, we strongly believe that a mandated ''pass-through'' requirement would have overwhelmingly negative consequences and undermine the purpose of the provision in the Act in the first place. It would require that in many, if not most, of the cases in which a cost-based PMS may exist, Commerce would be prohibited from addressing that PMS because the nature of the PMS is such that it is impossible or excessively difficult to directly tie the market situation ''cause'' to the cost distortion ''effect.'' To put it into perspective, it would be, at minimum, extremely burdensome and costly for U.S. industries seeking trade remedy relief or the U.S. Government, to use economic studies and other data to measure with specificity the direct financial impacts of slavery on specific labor wages, of intellectual property theft on the specific financial benefits which should have been appreciated by the owner of a patent or trademark, of export restraints on particular domestic prices, or of domestic-content and technology transfer requirements on particular costs of manufacturing. In fact, there is a possibility that none of these examples of potential cost-based particular market situations listed in § 351.416(g) which would, given certain circumstances, normally have distortive effects on costs of production, could be directly traceable through a ''pass-through'' analysis. We do not find such an interpretation to be reasonable or consistent with Congress' intentions and have therefore rejected the calls by certain commenters to revise the regulation to reflect a direct ''cause-and-effect'' or ''pass-through'' standard of weighing the evidence on the record in reaching a final PMS determination.

vii. Comments on the lists of information which Commerce determines to be, as a rule, relevant to cost-based PMS analysis.

Commerce received multiple comments on the list of information which it proposed to be relevant, in general, to a cost-based market situation analysis. One commenter expressed concerns that the information listed in proposed § 351.416(d)(2)(i) through (v) might not always be available to the parties, and expressed a particular concern about proposed paragraphs (d)(2)(i) through (iii) because governments or independent entities or organizations might not always produce such information. The commenter expressed a concern that if such data are unavailable, Commerce might automatically determine that there is insufficient record information to support the existence of a cost-based market situation.

Another commenter suggested that Commerce consider removing analyses of the price effects of government action and inaction in proposed paragraphs (d)(2)(ii) and (iii) because each report or documentation might define or interpret data differently and have different understandings of terms such as ''fair market value'' or ''significant input,'' which could lead to confusion on the record. That commenter expressed concerns that Commerce was relinquishing some flexibility and discretion in including such reports and documentation on the list of relevant sources.

A few commenters expressed concerns with the nature and quality of foreign government and independent analytical and academic organizations studies and reports. Some requested that Commerce clarify that hypothetical results from such reports, such as the reference to report conclusions in proposed paragraph (d)(2)(ii) that ''lower prices for a significant input in the subject country would likely result from government or nongovernmental actions or inactions taken in the subject country or other countries,'' could not be the sole basis for a cost-based market situation determination. Conversely, others expressed concerns that Commerce might create a hierarchy among such reports and studies, prioritizing certain studies over others on a claim that some are more ''speculative'' than others due to a lack of source data. They suggested that Commerce should make clear that just because one study may be based on less information than another does not mean that Commerce should automatically give it less weight. Instead, they suggested that Commerce should

[123] *See* section 773(e) of the Act.

[124] *See Collins Dictionary,* ''such that,'' retrieved November 8, 2023, *https://www.collinsdictionary.com/dictionary/english/such-that.*

[125] *See Proposed Rule,* 88 FR 29866.

[126] *Id.*

[127] *See NEXTEEL,* 28 F.4th at 1235.

consider all information on the record and take into consideration the reality that objective studies may not be available for every product and industry.

Commerce also received comments from commenters who suggested for every portion of the *Proposed Rule* in which Commerce relies on the term ''significant input,'' it should remove the term ''significant,'' because the use of that term would be overly restrictive. That term appeared in proposed § 351.416(d)(2)(i) through (iii) and (v) and (d)(3)(ii) and in multiple examples listed in proposed § 351.416(g). The commenters suggested that Commerce should remove the restrictive term ''significant'' because section 773(e) of the Act does not limit Commerce's authority in that manner, and in fact the Act uses the term ''of any kind.'' They disagreed with Commerce's explanation in the *Proposed Rule* that use of the term is necessary to prevent an administrative burden, instead suggesting that no party would file a PMS allegation for inputs which do not have a meaningful impact on the cost of production after adjusting for distorted costs. One commenter also expressed concerns that all ''significant'' inputs might not be distorted, but that a combination of other less ''significant'' inputs might be distorted and that the collected ''insignificant'' input distorted costs would have an impact on the overall cost of production.

In addition, one commenter expressed concerns with Commerce's comparison of prices paid for significant inputs used to produce subject merchandise under the alleged market situation to prices paid for the same input without the market situation, in the home market or elsewhere, in proposed paragraph (d)(2)(i), alleging that section 773 of the Act ''does not allow for a comparison'' of input prices in one country where a market situation allegedly exists and input prices in other countries where no such situation exists.

Furthermore, another commenter expressed concerns with Commerce's consideration of previous agency determinations or results that did or did not support the existence of an alleged PMS with regard to the same or similar merchandise in previous segments or proceedings. That commenter requested that Commerce explain that each record is separate and distinct and that it cannot presume an outcome or conclusion based on previous determinations or results. An additional commenter requested that Commerce emphasize that cost-based PMS determinations are based on the facts on the record and not presumptions based on information external to the record.

With respect to proposed paragraph (d)(2)(v), which pertained to the consideration of the use of property (including intellectual property), human rights, labor, and environmental protections in other countries and is addressed to a greater extent above, one commenter suggested that Commerce should remove the terms ''weak'' and ''ineffective'' entirely because neither term is defined and the terms create too much discretion for Commerce to make a cost-based PMS determination on an arbitrary basis. That commenter expressed concerns that such a broad use of discretion is inconsistent with the United States' WTO obligations. Likewise, other commenters expressed concerns with the same provision, arguing that because the provision does not explain how Commerce is going to consider various factors in doing price comparisons between governments with distinguishable economies and programs, Commerce should provide further guidance and standards in the final rule or preamble. Those commenters also complained that no burden of proof is set forth in this provision and that Commerce should provide further guidance and standards on that burden in the final rule or preamble. Lastly, those same commenters expressed concerns that Commerce had not listed any environmental, labor, human rights, or property (including intellectual property) standards in the regulation or preamble, and absent such standards, Commerce might ''unfairly penalize'' countries on a case-by-case basis for providing protections in a way which is different, but not less effective, how the United States provides protections.

In addition, another commenter expressed concerns with the existence of proposed paragraph (d)(2)(v) altogether, stating that Commerce's consideration of the actions or inactions of other governments in determining whether or not costs are distorted during a certain period of time is inconsistent with section 771(15) of the Act and the SAA [128] because both of those legal sources require that the ''ordinary course of trade'' analysis focus on the conditions and practices generally made in the same market as merchandise being examined. That commenter suggested that the law does not permit Commerce to analyze conditions and practices in other countries as set forth in proposed paragraph (d)(2)(v) because the prices and protections which Commerce would analyze using such information would not be costs incurred in the home market ''in the ordinary course of trade'' during the period of investigation or review.

Finally, another commenter expressed concerns that proposed paragraph (d)(2)(v) could be inconsistent with the United States' WTO obligations because it may result in the United States demanding that certain WTO members, for whom a PMS has been alleged, maintain certain standards for environment, labor, human rights, and property (including intellectual property) protections, while making no such demand of other countries if no PMS has been alleged with respect to their industries.

Commerce's Response:

As explained above, in response to certain comments, Commerce made certain changes to the list of information which it will generally find beneficial in most cases in determining the existence of a market situation which distorts costs of production, and that list now appears in § 351.416(d)(3). However, Commerce has not revised that list in response to the comments listed here, but instead addresses the comments raised.

First, although the information sources listed in § 351.416(d)(3)(ii) and (iii) will generally be helpful if complete and timely, we agree with the commenter who suggested that sometimes, some or all of these sources may not exist, may be incomplete, or may not be current. We also agree that sometimes, even if the various reports and documentation are timely and complete, there may be inconsistency between the terminology used and presumptions upon which the data and results provided rely. All of these concerns are standard concerns whenever an agency relies on outside studies and reports, and Commerce has a long history of familiarity with such potential concerns. None of these predictable data concerns, however, dissuade us from recognizing that despite those possible considerations, reports, and documents such as those listed in § 351.416(d)(3)(ii) and (iii) generally benefit our cost-based PMS analysis.

Furthermore, we disagree that considerations of price and cost effects remove Commerce's flexibility and discretion in administering this area of law. By listing these sources, we believe the public and Commerce both benefit

[128] *See* SAA at 834 (noting that the SAA states that Commerce ''may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market'').

from knowing the types of information which Commerce considers generally beneficial to a cost-based PMS analysis and in no way does it remove Commerce's ability to consider alternative information or even reject the listed sources if they suffer from inadequacies or other problems which Commerce determines undermine the conclusions of the listed sources on the record. To be clear, in response to one commenter's concerns, Commerce will not automatically reject a cost-based PMS allegation if the data listed in § 351.416(d)(3) is not on the record, including the reports and documentation listed in paragraph (d)(3)(ii) or (iii), or even if the information is on the record but proves to be unusable, or is unavailable, if other information is on the record. Ultimately, Commerce's determination of a cost-based market situation will be one based on all of the information on the record before it, and not just the historically helpful sources listed in § 351.416(d)(3).

In response to the comments raised on the results of certain ''external'' reports which some commenters called ''hypothetical'' or ''based on presumptions,'' Commerce will make its determinations based on the record as a whole. If a report includes solid data which supports its conclusions, for example, and is not contradicted by other information on the record, Commerce may determine based on record evidence that a cost-based PMS exists, consistent with that report. Claiming that a report's conclusions on price effects are ''hypothetical'' or ''presumptive'' ignores that fact that the reports Commerce frequently has received from such sources have been based on a great deal of data and analysis. For this reason, we continue to include such sources in the list of documentation which Commerce generally finds to be helpful to its cost-based PMS analysis. In addition, we agree with the commenters who suggested that sometimes one study may be based on less data than another. However, this fact alone does not mean that the study with more data is necessarily more accurate or beneficial. Commerce has no intention of creating a ''hierarchy'' of reports based on data sources, but instead will consider all information on the record before it and determine the relevance of such studies and reports individually on a case-by-case basis.

Likewise, Commerce will continue to consider previous determinations of the existence of a cost-based PMS by Commerce in § 351.416(d)(3)(iv) to be generally helpful. We do not disagree that each record stands alone, but there is no question that if Commerce has previously considered a circumstance or set of circumstances in a subject country covering the same or similar merchandise, that those analysis and facts are relevant to Commerce's analysis.

Commerce makes a PMS determination specific to a period of investigation or review, but if the merchandise, parties, and circumstances are the same or similar, all of that information can be extremely relevant to Commerce's analysis and ultimate conclusion.

With respect to the arguments that Commerce cannot lawfully compare prices and costs outside the subject country and the alleged market situation with prices and costs within the subject country under proposed § 351.416(d)(3)(i) and (v), we disagree that section 773 of the Act, or any statutory provision, hampers Commerce's analysis in that manner. If a market situation distorts costs in a subject country, sometimes there might be other prices of the same or similar merchandise within the same country which can be compared for purposes of determining if the circumstance or set of circumstances distorts costs of production. One of the commenters cites language in the SAA for its argument in this regard, which states that ''Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market.'' [129] We do not disagree that when Commerce is able to compare costs to other non-distorted costs in the same market, that is ''generally'' an informative comparison and very likely the most informative comparison available to Commerce.

However, in certain circumstances, the record may not reflect that factual scenario. It may be that the entire market for an input or subject merchandise within the subject country has been distorted, or at least that certain merchandise is not being purchased or sold in accordance with market principles anywhere in the subject country, because of the nature and size of the alleged market situation. When that is the case, it is completely reasonable and logical that Commerce may consider prices and costs outside of the subject country of a significant input into subject merchandise to determine if a cost-based PMS exists. We know of no statutory, regulatory, or judicial prohibition on Commerce considering such data in determining if certain costs reasonably reflect the costs of production in the ordinary course of trade. Indeed, Commerce has made this type of comparison in both determining the existence of a cost-based PMS and in determining the appropriate adjustment to remedy the PMS.[130] As we have stressed, Commerce's determination is based on the entire record, and information about both internal and external costs and prices may assist Commerce in determining whether the costs reported accurately reflect the cost of materials and fabrication or other processing of any kind in the ordinary course of trade, as required by section 773(e) of the Act.

We understand that some commenters believe that the phrase ''normal in the trade under consideration'' and the term ''ordinary'' in the statutory definition of ''ordinary course of trade'' in section 771(15) of the Act suggests that even if costs of production were distorted, if those costs were used by an examined producer or exporter in its normal business practices, Congress intended for Commerce to determine that those costs were ''ordinary'' and use those costs in its calculations. We find that such an interpretation is inconsistent with the language of section 773(e) of the Act requiring Commerce to consider whether costs, as reported, ''accurately reflect the cost of production in the ordinary course of trade,'' because under that interpretation all reported costs would be ''accurate.'' That interpretation is also inconsistent with the intentions of Congress for Commerce to address foreign production costs benefiting from lower, distorted costs of production. Accordingly, we find that such an interpretation of the definition of ''ordinary course of trade'' would undermine the very purpose of the cost-based PMS provision in the Act. Commerce will therefore continue to address distorted costs in its cost-based PMS analysis.

Furthermore, we are not removing the terms ''weak'' or ''ineffective'' in the regulation in describing certain protections, nor will we try to set up standards or define those terms, as no regulation could predict every and all possible scenario under this provision. It is clearly a case-by-case analysis. A government may have intellectual property protections in its laws but provides nothing but a proverbial ''slap on the wrist'' for violations of the law, in no way dissuading irresponsible

[129] *Id.*

[130] *See, e.g., Biodiesel from Argentina* IDM at Comment 3.

companies or individuals from violating those protections. Under any definition, such a law and protections would be considered ''weak.'' Likewise, another government may have hypothetically strong protections in its laws for protecting the waterways around a factory or for protecting workforce health and safety, but if the evidence on the record shows that the government does not enforce those laws or that they are largely ignored by businesses and government officials alike, there is no question that such laws and protections could be described as ''ineffective.''

As we have described above, weak and ineffective property (including intellectual property), human rights, labor, and environmental protections may contribute to distorted prices and costs of production, but might not contribute to any cost distortions, and a conclusion by Commerce on such matters must be based on the record evidence before it. As we have previously explained, in making such a determination, Commerce will weigh all of the evidence on the record in its analysis and determine if it is more likely than not that the alleged market situation contributed to distorted costs of production.

We do not agree that Commerce's analysis, as set forth in the regulation, ''unfairly penalizes'' countries for providing protections in a manner differently from the United States. Commerce's determination is not a ''penalty'' on a foreign government or a subjective statement on the priorities and values of another sovereign nation. It is an objective determination based on record evidence as to whether the lack of certain compliance costs ordinarily associated with certain enumerated protections contributed to a distortion in costs for certain producers or exporters in the subject country. As we explain above, we disagree with the generalized claims by certain commenters that the AD Agreement requires the United States to use prices and costs which it determines, based on record evidence, are distorted due to weak, ineffective, or nonexistent protections in its calculations.

On the other hand, we fully agree with the commenters who expressed concerns that different countries enforce certain protections through different methods, and even if those methods may differ from the United States, they may still prove to be strong and effective. Accordingly, we believe that it would not be logical to set forth restrictive standards in the regulation to determine what protections, or methods of protection, are strong or weak, or effective or ineffective. Instead, a determination of the strength and effectiveness of a protection in the subject country is an analysis best left for interested parties to argue and for Commerce to analyze, consider, and determine on a case-by-case basis.

Furthermore, we do not agree that paragraph (d)(3)(v) is inconsistent with the United States' WTO obligations. The United States is not demanding certain property (including intellectual property), human rights, labor, and environmental protections be applied in certain countries, but not in others. Instead, the United States is merely determining if weak, ineffective, or nonexistent protections in the subject country had an impact on the cost of production. That analysis is neutral among all countries and provides no preference for one over the other. Accordingly, it does not create a conflict with the United States' WTO most favored nation obligations.

Finally, we have declined to remove the term ''significant'' from ''significant input'' whenever that term arises in the regulations. If, as some of the commenters stated, no party will make allegations on ''insignificant'' inputs because insignificant inputs will not have a meaningful impact on the cost of production, after adjusting for distorted costs, then the use of the term should be of no consequence to parties making PMS allegations because the regulatory language will reflect actual practice. However, if a combination of ''insignificant inputs'' can, collectively and hypothetically, have a meaningful impact on the cost of production, Commerce would anticipate that interested parties would be inclined to make PMS allegations on those alleged distorted costs as well, either individually or in the aggregate. We have determined that the administrative and resource burden on the agency to review and consider PMS allegations for several ''insignificant'' inputs in potentially numerous cases would, be unreasonable and inhibit, or even prevent, the timely completion of the proceeding in which such allegations are made. Accordingly, we have retained the use of the term ''significant input'' throughout the PMS regulations.

viii. The definition of ''ordinary course of trade'' does not prohibit Commerce from determining that past government or nongovernmental actions do not preclude a finding of distorted costs of production under § 351.416(d)(4)(iv) or otherwise undermines the PMS examples set forth in § 351.416(g).

Commerce included language in the *Proposed Rule* that stated that the agency would ''not be required to consider'' certain information, and as noted above, we received several comments that expressed concerns that Commerce did not have the authority to prohibit consideration of information on the record. We agree and have revised the introductory language that was in proposed paragraph (d)(3) to instead explain that the examples set forth ''will not preclude the finding of a market situation'' in the introductory language of § 351.416(d)(4). Commerce will not prohibit parties from submitting such information on the record, and Commerce will consider their claims based on that information, but even if all they state is true, we have determined it is important to stress that Commerce normally will not consider such arguments beneficial or persuasive to its analysis.

One of those examples, as proposed, spoke to ''the existence of historical policies and previous actions taken or not taken by the government or industry in the subject country,'' and we received comments that essentially expressed concerns that such a provision was too broad. As explained above, we have narrowed and simplified the language in that provision to reflect what we were trying to address at its core: ''The existence of the same or similar governmental or nongovernment actions in the subject country that preceded the period of investigation or review'' will not preclude the finding of a market situation. As we explained in the *Proposed Rule,* in Commerce's experience some parties have argued that ''because an export restriction, or other market distorting policy or practice, has existed for many years in the subject country, the costs resulting from those actions or policies are now part of the 'ordinary course of trade' for that country.'' [131] Commerce explained that it disagreed with that interpretation and explained that cost distortions cannot become non-distortive merely because of historical usage. As Commerce stated in the *Proposed Rule,* ''the pre-existence of government actions or inactions, or other circumstances, does not make those situations market-based or nullify the distortion of costs during the relevant period of investigation or review.'' [132] Commerce also explained that ''actions taken by a foreign government that are not in accordance with general market principles or otherwise result in price suppression will normally distort costs of production every year they are in effect,'' and the mere fact that those actions previously existed will not

[131] *See Proposed Rule,* 88 FR 29863.

[132] *Id.*

prevent Commerce from finding the existence of a cost-based PMS.[133]

Despite Commerce's explanation in the *Proposed Rule,* some commenters suggested that because the term ''ordinary course of trade'' is defined in section 771(15) of the Act as ''the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind,'' such language indicates that not only can Commerce not refuse to consider historical information, it is, in fact, required to analyze historic conditions over a ''reasonable'' period of time prior to the exportation of the subject merchandise. In that regard, we agree that Commerce is required to consider ''conditions and practices'' which are ''normal in the trade'' for the subject merchandise during a period of time in considering if costs are incurred in the ordinary course of trade. It is for that reason we have modified the language in the regulation from that proposed in the *Proposed Rule.*

However, we disagree with the premise that because government actions, such as subsidies, nongovernmental actions, or government and nongovernmental inactions, have been applied over time, that fact alone ''normalizes'' those actions and inactions, and requires Commerce to consider those actions or inactions to be in the ''ordinary course of trade,'' even if those actions or inactions have distortive effects on prices and costs. The commenters suggesting such an interpretation of the Act expressed concerns with Commerce's determination that past actions or inactions do not prevent a finding of a cost-based market situation in proposed § 351.416(d)(3)(iv). They also commented that all of the examples set forth in § 351.416(g) of potential cost-based particular market situations cannot be addressed in Commerce's calculations if those government or nongovernmental actions existed in a time period preceding an investigation or administrative review, with some commenters claiming that most of the listed examples are just common economic policies and global phenomena which are in the ordinary course trade and are not particular to individual respondents.

As we explained above, we find that such an interpretation of section 771(15) of the Act is inconsistent with the below-cost PMS provision in section 773(e) of the Act, requiring Commerce to consider whether costs, as reported, ''accurately reflect the cost of production in the ordinary course of trade.'' [134] Under such an interpretation of ''ordinary course of trade,'' if all subsidies and government or nongovernmental actions or inactions were considered ''normal,'' no matter if they impacted costs or not, then all reported costs would be considered ''accurate.'' Such an interpretation is illogical—the statute does not turn a blind eye to government or nongovernmental actions that distort costs of production under a blanket claim of historic normalization.

Furthermore, such an interpretation is also inconsistent with the intentions of Congress for Commerce to address foreign companies benefiting from lower, distorted costs of production through the below-cost PMS provision. As Commerce explained in the *PMS ANPR,* members of the U.S. House of Representatives and U.S. Senate expressed concerns about inputs being ''subsidized'' or ''otherwise outside the ordinary course of trade,'' [135] and that U.S. industries were ''being cheated'' by foreign industries that were ''illegally subsidizing'' certain products,'' [136] in introducing the legislation into law. Such language does not suggest that Congress intended to allow government or nongovernmental actions or inactions that distort costs of production to be considered ''normal'' or ''ordinary'' just because they were in place before the period of investigation or review.

Accordingly, we have revised and simplified the regulation as explained above in § 351.416(d)(4)(iv) to more accurately explain that the mere existence of the same or similar government or nongovernmental actions in the subject country that preceded the period of investigation or review will not preclude a finding of a market situation. In addition, we have continued to provide all twelve of the examples set forth in § 351.416(g) in the *Proposed Rule,* with some modifications, as described above.

ix. Providing a list of sources which Commerce determines will be of little to no benefit in most cases to a cost-based PMS determination in § 351.416(d)(4) will not have a ''chilling effect'' on other arguments.

Certain commenters approved of Commerce's listing of the types of information that it generally does not find beneficial to a cost-based PMS analysis. Such commenters considered the list to be helpful and consistent with the Act and Federal Circuit precedent, citing *NEXTEEL.* Those commenters suggested that by providing a list of sources which generally do not benefit Commerce's analysis, interested parties will be better aware of what arguments to make or not make in persuading the agency that a cost-based PMS exists or does not exist, thereby saving every participant's time and resources. In contrast, some commenters also suggested that such a list was not necessary and might unduly restrict Commerce's ability and flexibility to consider all of the record evidence on a case-by-case basis.

Still other commenters expressed a concern that listing documents which Commerce ''would not consider,'' creates a ''chilling effect'' and prevents parties from making good arguments based on record evidence which might be uniquely appropriate to the case before the agency. Those commenters expressed concerns that because of such restrictions, parties might be predisposed to not even submit information on the record which could otherwise be helpful to a cost-based PMS analysis in a specific, given case. Still other commenters expressed concerns that by including such a list, Commerce might even be violating the due process rights of those who should be able to provide any argument they wish to argue their positions before the agency.

Commerce's Response:

In changing the introductory language of proposed § 351.416(d)(3), which used the language ''will not consider,'' into the ''will not preclude a finding'' language in § 351.416(d)(4), as described above, Commerce has addressed any due process claims or arguments that such a list might unduly restrict Commerce's ability and flexibility to consider certain arguments and facts on the record. Parties are not prevented from submitting information and arguments on the record and Commerce will consider such arguments and facts, but we continue to believe that the public benefits from understanding that the agency generally finds little benefit to its analysis in most cases when the listed information and arguments are submitted, for the reasons explained in the *Proposed Rule.*

As for the concerns expressed for a ''chilling effect,'' in some ways, that is the purpose of the regulatory provision to the extent that it allows parties to better understand the value of making certain arguments over others. No party should waste its time and resources making an argument based on certain information which Commerce has

[133] *Id.*

[134] *See* section 773(e) of the Act.

[135] *See PMS ANPR,* 87 FR 69235 (citing the Congressional Record—House, H4666, H4690 (June 25, 2015)).

[136] *Id.* (citing the Congressional Record—Senate, S2899, S2900 (May 14, 2015)).

determined previously to be largely irrelevant to its cost-based PMS analysis. One commenter suggested that Commerce should continue to just address such views on a case-by-case basis and provide no list of examples of arguments and facts that it frequently finds to be irrelevant, but we have determined that the public benefits more from the inclusion of those examples in the regulation and understanding that such arguments are generally of little help to Commerce in deciding if a cost-based market situation exists. Thus, Commerce does not believe that the described examples of arguments and facts listed under § 351.416(d)(4) will have a ''chilling effect'' on valid cost-based PMS allegations.

Section 351.416(d)(4)(i) provides that the lack of precision in the quantifiable data relating to the distortion of prices or costs in the subject country will not preclude the finding of a cost-based PMS. Commerce provided a lengthy explanation for this provision in the *Proposed Rule.*[137] Certain commenters suggested that Commerce should remove the provision from the list because they expressed concerns that it might prevent parties from providing more accurate or precise data in response to, or in making, a PMS allegation. Others expressed concerns that it suggested that Commerce will not consider quantifiable data at all in its analysis. Still, others expressed concerns that the provision suggested that Commerce would conclude that it was acceptable to rely on erroneous data in certain circumstances in making a cost-based PMS adjustment where precise quantifiable data were unavailable. Lastly, one commenter requested that Commerce explain that the applicability of a data source is different from the precision of data and, therefore, even if Commerce determines to retain the regulatory provision, it should explain to the public that parties can still argue that one data source is more applicable and appropriate than another data source, and that decisions about the precision of quantifiable data would only come after Commerce determined the appropriate data sources to apply.

Section 351.416(d)(4)(ii) addresses costs of production which would allegedly exist absent a cost-based PMS, providing that without objective data, Commerce would not find such ''hypothetical'' or speculated costs to be of assistance to its analysis. One commenter expressed concerns that the provision might preclude Commerce from finding a PMS based on an input which, due to the PMS, makes up a relatively small percentage of the cost of production. For example, a single production input might, absent a PMS, represent a large percentage of a manufacturer's cost of production. However, because of a PMS, it may be significantly undervalued and instead represent a small percentage of the manufacturer's reported cost of production. The commenter reasoned that if Commerce refuses to consider a ''hypothetical'' cost analysis of what an input's value would be absent the PMS, then it might fail to actually address the cost distortions in the first place. The commenter therefore disagreed that arguments about hypothetical costs are of no value and posited that Commerce should not base its analysis only on ''significant'' inputs but rather on cost distortions in inputs generally.

With respect to both of these provisions, one commenter expressed agreement with the statement that Commerce made in the preamble to the *Proposed Rule,* that in reviewing the record to determine if there is a cost-based PMS, Commerce's ''analysis is usually qualitative, rather than quantitative, in nature,'' in that Commerce is not required to find a precise quantitative distortion to determine a PMS exists.[138] In the *Proposed Rule,* Commerce explained that ''whether Commerce's analysis is solely qualitative or both qualitative and quantitative,'' Commerce would ''consider all relevant information submitted on the record by interested parties.'' [139] Accordingly, the commenter emphasized that even if precise quantifiable data are unavailable, qualitative allegations and information can be useful if those allegations and information are supported by objective record evidence. The commenter stated that Commerce should note the importance of qualitative allegations and information in the final rule.

Commerce's Response:

We agree with the commenter that stated that qualitative allegations and information, be it claims that forced labor in the country has a suppressing effect on overall labor values, for example, or that a government's technology transfer requirements possibly distort the market price for particular products, can be extremely useful to Commerce's cost-based PMS analysis, as long as those allegations and information are supported by objective evidence on the record. That is true under paragraph (d)(4)(ii) for both allegations of a PMS and information provided in response to those allegations.

With respect to § 351.416(d)(4)(i), we will not remove the provision, but rather will state that we agree with the commenters who wanted Commerce to emphasize that this provision is not meant to prevent or dissuade parties from submitting more accurate or precise data on the record. Like qualitative allegations and information supported by objective evidence on the record, more comprehensive, accurate and precise data are always appreciated and considered by Commerce in its analysis when such information is placed on the record. Commerce's cost-based PMS determinations are based on record evidence, and we disagree with the commenter who expressed concerns that the regulation suggests the agency would not consider quantifiable data or the commenter who expressed concerns that Commerce was suggesting that it would be acceptable to rely on erroneous data. Such claims are unfounded. The purpose of § 351.416(d)(4)(i) is to address those situations in which some quantifiable data are on the record that support finding the existence of a cost-based PMS, but commenters suggested that because the data are not adequately precise, those data are meritless or should be ignored. We continue to find that such claims are of no benefit to Commerce's cost-based PMS analysis and have therefore included that example on the list.

In response to the request that Commerce clarify that the appropriateness of data sources is a different issue from whether the quantifiable data are adequately precise as articulated in the regulation, we agree with the commenter. There may be situations in which there are multiple data sources before the agency and Commerce will determine which data source is the appropriate data source to use in its calculations based on the perceived benefits of each, including the precision and detail of quantifiable data specific to the costs of production of subject merchandise. In that case, if one data source has more precise quantifiable data specific to the costs of production of the subject merchandise than other data sources, that could be a factor, among others, which leads Commerce to select that data source as the one it uses for purposes of its analysis.

The scenario set forth in § 351.416(d)(4)(i) addresses the situation, which Commerce has experienced multiple times, in which

[137] *See Proposed Rule,* 88 FR 29863.

[138] *Id.,* 88 FR 29862.

[139] *Id.*

Commerce has determined to rely on certain data and interested parties attempt to undermine the usefulness of the information by claiming that the quantifiable data in that data base are insufficiently precise to support a cost-based PMS allegation. It is that argument which Commerce finds to be of no assistance to its analysis and to which § 351.416(d)(4)(i) applies.

In response to the comments stating that Commerce's PMS analysis might be undermined by the undervaluation of an input, thereby making it appear to be insignificant on its face, absent an argument of a hypothetical cost without the existence of a PMS under § 351.416(d)(4)(ii), we disagree. The provision states explicitly that allegations of speculated prices or costs of significant inputs unsupported by objective data may prove to be of little value to Commerce's PMS analysis. In the scenario raised by the commenters, if a party alleged that a PMS undervalued a particular input, and provided an objective analysis with data which reflect that the input would be significant absent the existence of the alleged PMS, such an allegation and data would be helpful to Commerce's analysis. However, if the allegation was devoid of any objective analysis and data, then, as the provision states, speculated prices and costs would be of little assistance to the agency's analysis. The issue in such a situation would not be, as suggested by the commenters, whether the input was significant or not significant—that matter could be determined through the PMS analysis. The issue under § 351.416(d)(4)(ii) would be whether the alleging party merely speculated about the prices or costs of the input, or whether the PMS allegation was supported by objective data on the record.

x. The factors listed by Commerce to determine if a market situation is particular in § 351.416(e) are in accordance with law.

Section 351.416(e) addresses factors Commerce will consider in determining if a market situation is particular. As explained above, Commerce has simplified the provision from that proposed and revised certain language to bring it into conformity with other text in the regulation, as requested by some commenters. Commerce has also modified the language so that it applies equally to sales-based and cost-based particular market situations. Certain commenters questioned Commerce's decision to provide a separate particularity consideration from a market situation determination, arguing that such a separate consideration is unnecessary under the Act. However, we believe that both the CIT and Federal Circuit have disagreed with this assessment in various holdings and that Commerce is required in PMS determinations to separately analyze if a market situation is particular to certain parties or products in the subject country. Accordingly, we have retained paragraph (e) to provide factors Commerce will consider as part of its particularity analysis.

Some commenters also commented that Commerce should focus not on whether a market situation ''impacts'' prices or costs for only certain parties in paragraph (e)(1), but instead focus on whether a market situation ''suppressed'' or ''lowered'' prices or costs for certain parties. Although we do agree that in cost-based PMS analyses and determinations, Commerce's primary concern will be whether a market situation had a downward effect on costs of production to the disadvantage of the domestic industry, we also recognize that sometimes market situations may, counter to market principles, causing prices and costs to both rise and fall. For purposes of determining whether a market situation is particular, we do not see the distinction between distortions which cause costs to decline or distortions which cause costs to rise. The important part of the particularity analysis is whether the market situation impacted prices or costs for only certain parties or products in the subject country. Accordingly, we have determined to maintain the use of the term ''impact'' in the regulation in determining if a market situation is particular.

Comments on this provision otherwise essentially fell into one of two interpretations of the word ''particular.'' One group of commenters expressed concerns that Commerce misunderstood in the proposed regulation what the term particular means and misunderstood various statements made by the courts. They suggested that a market situation cannot be particular if it exists in one form or another outside of the subject country, for it must be unique only to the subject country. They also suggested that it cannot be particular if it applies to industries beyond those of producers of subject merchandise or inputs into subject merchandise. They commented that a market situation is only particular if it is limited, by its terms, to producers of subject merchandise, and that any interpretation broader than that is lawfully impermissible.

These commenters expressed concerns that Commerce's proposed regulation indicated that a cost-based market situation could contribute to distortions of costs for a large number of parties or products, including parties and products with no relationship to subject merchandise. They expressed concerns that such an analysis goes beyond the intentions of Congress, and that the Act was amended only to address particular programs which distort costs solely for subject merchandise in the subject country, and no more.

Furthermore, one commenter suggested that because a Panel concluded that the term ''particular'' in a price-based PMS case meant ''distinct, individual, single and specific,'' [140] Commerce's proposed regulations are WTO inconsistent because they allowed for Commerce to adjust its calculations for market situations that applied to industries far beyond such a limitation.

However, other commenters suggested that the term ''particular'' in the Act is undefined and need not be limited to a particular country, economy, or industry, and that even the Federal Circuit in *NEXTEEL* recognized that a global phenomenon like the presence of low-priced Chinese steel could contribute to a cost-based PMS in multiple countries as long as there is ''sufficient particularity'' to the market in question.[141] Some commenters advocated adoption of the proposed provision without a change. Other commenters advocated for Commerce to maintain the factors set forth in the *Proposed Rule* for particularity, but also requested that Commerce elaborate further on the circumstance or set of circumstances that could impact prices or costs for certain parties or products and the amount of impact which Commerce would consider sufficient to make the market situation ''sufficiently particular'' for purposes of a PMS determination.

Commerce's Response:

We disagree with the commenters who suggested that Commerce is required by the Act or the courts to limit its analysis only to government actions in the subject country that are targeted solely to producers of subject merchandise or inputs into subject merchandise. The term at issue is ''particular market situation,'' and the focus is on the distortion of costs of production for a cost-based PMS and whether a comparison of sales is proper for a sales-based PMS. Some situations may impact particular parties, other situations may impact particular products, and others may be so

[140] *See* Panel Report, Australia—Anti-dumping Measures on A4 Copy Paper, WTO Doc. WT/DS529/R (adopted 27 January 2020).

[141] *See NEXTEEL,* 28 F.4th at 1237.

expansive as to impact a large number of parties and products among the general population of the subject country. For a situation to be considered particular, the key question is whether it has impacted only certain parties or products or whether it is sufficiently broad as to impact the general population of parties and products in the subject country. We do not believe the analysis should be any further complicated than that question.

Any other understanding of the term ''particular market situation'' in the context of a cost-based PMS would require Commerce to ignore situations that distort costs in the subject country because a situation could impact other manufacturers in the subject country as well as manufacturers of the merchandise subject to an investigation or order (*e.g.,* all steel manufacturers could be impacted and not just manufacturers of steel wheels). Such limitations on Commerce's ability to determine if costs are distorted would be arbitrary and inconsistent with the purposes of the cost-based PMS provision, and we find no support of such a limitation in the Act. Section 351.416(e)(1) clarifies that Commerce's analysis is relatively simple and straightforward, as reflected by the 12 examples set forth in § 351.416(g)—if a market situation distorts costs of production for only certain parties or products in the subject country, it is particular.

With respect to the request from some commenters that Commerce provide further analysis in its regulations or preamble as to the amount of impact which Commerce would consider sufficient to make a market situation ''sufficiently particular,'' we have determined that such an analysis is a decision best left to be addressed on a case-by-case basis. There are many different types of market situations, as shown by the examples set forth in § 351.415(g), and the delineation between ''certain parties and products'' and ''the general population of parties and products in the subject country'' would be one best left to the facts on the case before Commerce. Accordingly, we will not include any further direction, at this time, in the regulation.

xi. Commerce's authority to determine the appropriate adjustment to apply, as set forth in § 351.416(f), is lawful.

As explained above, Commerce revised § 351.416(f) as presented in the *Proposed Rule* in several ways. The provision now clarifies that when the Secretary is unable to precisely quantify the distortions to the cost of production of subject merchandise to which the PMS contributed, the methodology used by Commerce to determine an appropriate adjustment will be based on record information. We have also added a provision which states that Commerce may determine that an adjustment is not appropriate even if it does find the existence of a PMS if certain circumstances exist, with examples of such circumstances listed. These changes were all made to the paragraph in response to comments we received on the *Proposed Rule.*

There were additional comments on the provision from the public, and suggestions which, after consideration, we determined not to incorporate into the regulation. All commenters agreed that if the information on the record provided a means of precisely quantifying the distortion to costs, then an adjustment based on that quantification was required. However, at that point there was disagreement. Some commenters stated that if the distortion to costs cannot be quantified precisely, then Commerce does not have the authority to make an adjustment. Other commenters suggested that Commerce must still find a means to quantify the distortion in some way based on record evidence if it cannot quantify the distortions precisely. A third set of commenters supported Commerce's proposed regulation and suggested that Commerce should be free to use whatever information on the record it believes appropriate to make an adjustment, consistent with the language of section 773(e) of the Act, which states that Commerce may use ''any other calculation methodology'' once a cost-based PMS is determined to exist.[142] That third set of commenters suggested that whatever methodology Commerce determined to use in a given case should be fact- and case-specific, and tied to the nature of the product at issue and the availability of information.

For the other two sets of commenters, they pointed out that section 773(b) of the Act requires an analysis as to whether sales of subject merchandise are outside the course of trade due to distorted costs. They commented that Commerce failed in the *Proposed Rule* to address the holdings by the CIT and Federal Circuit which held that the statute does not permit Commerce to apply its below-cost test to transactions it finds distorted by a PMS, and they requested that either Commerce remove paragraph (f) entirely or address the legislative restrictions and court decisions in the provision or the preamble to these regulations.

They also suggested that, despite the Federal Circuit's holding in *NEXTEEL* that Commerce need not quantify the cost distortions precisely in adjusting for a cost-based PMS, Commerce cannot adjust its calculations without some determination as to the amount of distortions caused by a cost-based PMS and allowance for parties to make arguments in each case to that effect. Otherwise, they suggested that any adjustment to Commerce's calculations could not be based on a ''reasonable methodology.''

In addition, some commenters expressed concerns that in using the term ''reasonable methodology,'' the regulations did not define what methodologies are ''reasonable.'' Likewise, other commenters requested that Commerce define what ''calculations'' are intended when the regulation states that Commerce may adjust its calculations in paragraph (f), again citing CIT and Federal Circuit holdings that stand for the proposition that the statute does not contain a provision which allows Commerce to apply a PMS adjustment for purposes of its below-cost test.

Another commenter suggested that Commerce should include the term ''significant'' before the word ''distortions'' because Congress only intended for significant cost distortions to be addressed by Commerce in its calculations.

In addition, other commenters suggested that the regulation should prohibit the application of AFA under sections 776(a) and (b) of the Act in determining an adjustment for a cost-based PMS and prohibit the consideration of previous Commerce determinations based on AFA.

Finally, those same commenters also suggested that Commerce should prohibit the application of an adjustment for a cost-based PMS based on a subsidy when Commerce has already countervailed a subsidy at issue in the companion CVD proceeding to prevent the application of a double remedy.

Commerce's Response:

The purpose of these regulations is to address Commerce's analysis for determining the existence of a PMS. Paragraph (f) addresses the fact that Commerce has the authority to adjust its calculations once it determines the existence of a cost-based PMS. As several commenters pointed out, we are restricted by the Act and the courts' interpretation of the Act from making certain adjustments to our calculations.

[142] These commenters suggested that such an analysis is consistent with the Federal Circuit's opinion in *NEXTEEL,* which stated nothing in the statute requires Commerce to precisely quantify the distortion caused by a PMS in order to make an affirmative PMS finding. *See NEXTEEL,* 28 F.4th at 1234.

We are also aware, as some other commenters have noted, that recently legislation has been proposed to Congress to remove those restrictions. Accordingly, we have decided not to codify with any specificity the adjustments Commerce may or may not make in its calculations in paragraph (f), and instead have drafted the regulation using general terminology which may apply if the status of the adjustments Commerce can make to its calculations remains the same or changes. We will therefore not define the terms ''reasonable methodology'' or ''calculations'' in the regulation, but we do recognize that at the time these regulations are issued, Commerce is unable to adjust for a cost-based PMS determination when performing the sales-below-cost test, pursuant to section 773(b)(1) of the Act.

Likewise, we will not add the term ''significant'' before the term ''distortion in the cost of materials and fabrication or other processing,'' or any other use of the term ''distortion'' in paragraph (f) because the Act does not require such a restriction and we believe that such a restriction would unreasonably limit Commerce's authority to determine to adjust, or not adjust, its calculations as it finds appropriate, on a case-by-case basis. There may be one proceeding in which Commerce finds that a PMS contributed to one distortion in costs, while in another proceeding it finds that the PMS contributed to several different cost distortions. The addition of the word ''significant'' to the term would require Commerce to determine if a single or combination of distortions met a standard of significance before it could make an adjustment to its calculations in every case. We will not include such an additional requirement in the regulation. Notably, we have already limited our cost-based PMS analysis to ''significant'' inputs into the production of subject merchandise or the subject merchandise itself; therefore, we see no reason to further limit our analysis in paragraph (f) in the manner suggested by the commenter.

In response to the request from certain commenters that the regulation should impose an across-the-board prohibition on the use of AFA under sections 776(a) and (b) of the Act in determining an adjustment for a cost-based PMS or prohibit the consideration of previous Commerce determinations based on AFA in making an adjustment, we do not believe such regulatory prohibitions would be appropriate. The appropriateness of the use of AFA is determined on a case-by-case basis. For example, it is possible that in a given investigation or review, Commerce might determine that a single respondent benefited from a cost-based PMS. If Commerce requested information from the respondent pertaining to the PMS allegation in the conduct of the proceeding, and the respondent failed to act to the best of its ability in providing the necessary information, then the application of AFA under sections 776(a) and (b) in selecting from possible adjustments to its calculations would be warranted. An across-the-board prohibition on the use of AFA or previous agency determinations based on AFA would unreasonably prevent such an application in that case. Accordingly, we have not incorporated the suggested prohibitions into paragraph (j) of § 351.416.

With respect to commenters who suggested that Commerce should prohibit the application of an adjustment for a cost-based PMS based on the existence of a subsidy in an AD proceeding when Commerce has already countervailed that subsidy in a companion CVD proceeding to prevent the application of a double remedy in the regulation, we disagree that such a regulatory restriction is necessary or warranted. The AD and CVD laws are separate regimes that provide separate remedies for certain unfair trade practices and in proceedings in which Commerce has been faced with such an argument, Commerce found that neither the Act nor the record evidence supported an ''adjustment of the AD remedy to account for a putative overlap with the CVD remedy.'' [143] In other words, Commerce concluded that the existence of the CVD remedy was not grounds to reconsider or adjust the PMS remedy in a companion dumping investigation. Additionally, when that determination was appealed to the Federal Circuit, the court upheld Commerce's determination that the record did not support a finding that a double remedy resulted when the same government action countervailed in a CVD proceeding was also the basis of a cost-based PMS finding and adjustment in the companion AD proceeding.[144] Accordingly, no addition of such an all-encompassing prohibition to paragraph (f) is warranted.

Lastly, in response to the suggestion that Commerce cannot make an adjustment to its calculations without some quantification of the distortion of costs, we note that the purpose of Commerce's adjustment is to address the observed cost distortions. Accordingly, in general, Commerce's selected methodology will attempt to estimate the amount of distortions in the cost of production of the subject merchandise pursuant to that exercise. As noted above, we have modified the language of the regulation to reflect that when Commerce uses a reasonable methodology to determine an appropriate adjustment to its calculations, that methodology will be based on record information. We have not defined what adjustments Commerce may make to address those cost distortions. Whatever methodology Commerce employs to determine the appropriate adjustment (*e.g.,* Commerce might determine at time it is appropriate to replace a distorted value on the record with a market-determined value, while other times Commerce might determine it appropriate to adjust the reported costs with an amount to offset the cost distortions) will be case-specific and depend on the facts on the record and what information is provided to Commerce for purposes of making an adjustment. Thus, we have determined it would not be appropriate to set forth standards for quantifying the cost distortions and determining an appropriate adjustment to its calculations in all cost-based PMS determinations in the final regulation.

xii. The examples set forth in § 351.416(g) help clarify the types of actions and inactions Commerce may determine to be a PMS.

Several commenters expressed strong support for Commerce's decision to include examples of government or nongovernment actions that may be found to be a cost-based PMS in paragraph (g) of the regulation. They stated that such examples will help inform both Commerce employees and parties outside of Commerce as to the circumstances or set of circumstances which sometimes distort costs of production of subject merchandise and inputs into subject merchandise.

One commenter requested that Commerce emphasize that the list is not comprehensive, and that there are many more circumstances beyond the 12 examples that might be determined to be a cost-based PMS.

Other commenters provided multiple examples in which the circumstances listed in paragraphs (g)(1) through (12) might not distort costs and, therefore, would not always be determined to be

[143] *See Final Results of Redetermination Pursuant to Court Remand, Vicentin S.A.I.C. et al.* v. *United States,* Consol. Court No. 18–00111, Slip Op. 20–91 (CIT July 1, 2020), dated November 12, 2020, at 5–6, available at *https://access.trade.gov/resources/remands/20-91.pdf.*

[144] *See Vicentin S.A.I.C. et al.* vs. *United States,* 42 F.4th 1372, 1381 (Fed. Cir. 2022) (*Vicentin S.A.I.C.*) (''{the PMS adjustment} resulted in an adequate remedy for dumping, which is not duplicative of the countervailing duty remedy.'').

cost-based particular market situations. One commenter suggested in one example that producers might respond to government export restrictions by cutting production or input producers might simply pocket rebates and, in both cases, the result would be no changes in prices or costs of production.

Some of those commenters expressed concerns that including the 12 examples might confuse the public into thinking these circumstances will always be, *de facto,* a cost-based PMS and they suggested that Commerce should remove the examples altogether. Other commenters did not suggest the removal of the examples, but instead, requested that Commerce emphasize that these are just examples and that two similar fact patterns can have very different impacts on the cost of production, depending on facts specific to the record before the agency in a specific proceeding.

For paragraph (g)(1), some commenters opposed the focus on ''global'' overcapacity—stating that mere ''overcapacity'' should be sufficient for that example, global or otherwise. Others suggested that any situation which is ''global'' in effect would not be particular and, therefore, could not be a PMS. Still, others did not question that Commerce has the authority to address global overcapacity in its regulations, but rather suggested that such an analysis could lead to legal disputes and trade tensions with other global partners. Those commenters requested that Commerce remove that example from the proposed regulation for diplomatic purposes.

For paragraph (g)(2), certain commenters suggested that government ownership does not always lead to distorted costs, while another commenter agreed with Commerce that direct and indirect actions pertaining to inputs, particularly actions or inactions by the government, can have significant impacts on the overall distortion of costs of production.

For paragraphs (g)(4) and (5), two commenters suggested that government intervention and export restrictions do not always cause distortions, and they requested that Commerce emphasize in those examples that Commerce must also find that costs of production were distorted before finding the existence of a PMS.

For paragraph (g)(8), one commenter expressed its support for that example, highlighting that financial assistance takes different forms (*e.g.,* tax incentives, such as rebates and exemptions). Another commenter suggested that, despite the legislative history of the below-cost PMS provision in the Act, Commerce should not address government subsidies through the dumping law in a PMS determination, but instead should address such concerns solely in a CVD proceeding. Still other commenters suggested that government assistance is irrelevant in calculating costs of production, but notwithstanding if there is already a CVD companion order countervailing the subsidy at issue, Commerce may not find a cost-based PMS if it results in the application of a remedy twice for the same action, which is impermissible under U.S. WTO obligations and U.S. law.

With respect to paragraph (g)(9), one commenter voiced its strong endorsement for a finding that government actions which otherwise influence the production of subject merchandise or significant inputs can distort costs of production, such as technology transfer requirements and, therefore, be an example of a below-cost PMS. Another commenter, however, expressed concerns with the economics behind such an example, because if Commerce is only concerned about suppressed prices, then domestic content requirements and technology transfer requirements might actually artificially raise prices and costs rather than diminish them. That commenter suggested that because Commerce's assumption that the government actions listed in this example only distorts costs downward is flawed, paragraph (g)(9) should be removed as an example.

With respect to paragraphs (g)(10) and (11), certain commenters expressed their support for Commerce's acknowledgement that weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, and environmental protections could impact costs of production and could warrant an adjustment to Commerce's AD calculations. Others, however, critiqued the regulations for providing no guidance on how Commerce intends to address such allegations, what sources it intends to use in determining if protections are weak or ineffective, and how a respondent with no control over such government policies could respond to questionnaires on the issue. As noted above, still others expressed concerns that these provisions were in violation of United States' international obligations and unfairly ''punished'' governments for administering their laws in a different manner than the United States.

For paragraph (g)(12), one party requested that Commerce define the term ''strategic alliance,'' while another suggested that adjusting cost calculations based on prices derived from private company arrangements was illogical because sometimes such arrangements increase rather than decrease the costs of production and, if the companies are affiliated, the Act already addresses distorted prices and costs through the transactions disregarded and major input rules in sections 773(f)(2) and (3) of the Act.

Lastly, one commenter asked Commerce to consider that strategic alliances do not require joint ownership, familial grouping, or formal agreements to exist to distort costs. Therefore, this commenter reasoned, Commerce should acknowledge that it will not disregard relationships in which these circumstances may not be formally recognized or named.

Commerce's Response:

Commerce agrees with every commenter that emphasized that the examples in § 351.416(g) are just illustrative and that the list is not comprehensive (*i.e.,* exhaustive). As multiple commenters argue, governmental and nongovernmental actions and inactions frequently do not contribute to the distortion of costs of production; thus, depending on the facts in an individual case, the described example simply may not be a cost-based PMS. That is made clear by the actual text of each example, but because many commenters expressed concerns about that fact, we are emphasizing in the preamble that these are just examples, dependent on the facts of each case. Nonetheless, Commerce also believes that listing examples provides a better illustration of cost-based particular market situations than just a definition or test. It certainly provides more guidance than not having examples at all, as suggested by one commenter. Accordingly, we have retained each example in the final regulation.

With respect to comments on the individual examples which are not focused on case-specific distortions, Commerce responds as follows.

• Commerce has retained the use of the term ''global'' before ''overcapacity'' in paragraph (g)(1) because that is the intended example and one which Commerce has observed and addressed in past proceedings.[145] Commerce disagrees that it does not have the authority to address distortions caused by global overcapacity in the subject country, and Commerce does not believe the potential effects of addressing global overcapacity on other

[145] *See Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Amended Final Results of Antidumping Duty Administrative Review; 2020–2021,* 88 FR 2606 (January 1, 2023), and accompanying IDM at Comment 1.

trading partners is relevant for purposes of the trade remedy laws.

• In response to the comments on paragraph (g)(8), Commerce agrees that government financial assistance can take many forms, but disagrees that it cannot address subsidies through a cost-based PMS for the reasons explained above and in the *Proposed Rule.*[146] We emphasize that financial assistance does not always mean that a subsidy is countervailable, but it may still have an impact on costs of production and, therefore, warrant a cost-based PMS determination. Further, as explained above, even if Commerce has countervailed a subsidy in a companion CVD investigation or review, that does not mean that the application of a cost-based PMS adjustment results in a double remedy. In fact, agency experience has shown that it does not.[147]

• With respect to the comments on paragraph (g)(9), Commerce does not disagree that government actions which otherwise influence the production of subject merchandise may sometimes distort prices and costs downward, while other times, they may actually distort prices and costs upward. In either case, such actions have a distortive impact on costs of production. The existence of costs of production which are not in the ordinary course of trade is a different issue from whether Commerce should make an adjustment to its calculations in response to those distortions under § 351.416(f). Commerce has retained this example in paragraph (g), however, as addressed above, Commerce has modified the example to address only three articulated circumstances which may impact prices and costs.

• In response to the comments on paragraphs (g)(10) and (11), for the reasons provided above, Commerce has determined that it has the authority to address weak, ineffective, and nonexistent protections that distort costs of production, and Commerce does not believe that it would be appropriate at this time to set forth standards and tests to address hypothetical scenarios in the regulation. Such analyses and determinations will be fact-specific and addressed by Commerce on a case-by-case basis. Furthermore, as Commerce is only analyzing factors which distort costs of production, such an analysis is in no way a violation of the United States' WTO obligations.

• Finally, with respect to paragraph (g)(12), Commerce has revised the language to explain that the provision applies to nongovernmental entities that, for example, form business relationships between producers of subject merchandise and suppliers of significant inputs to the production of subject merchandise, including mutually-beneficial strategic alliances or noncompetitive arrangements, that result in distortive prices and costs. This language adequately describes the business relationships at issue in this example, and an additional definition of strategic alliances is not necessary in the regulation, as requested by one commenter. Furthermore, as the transactions disregarded rule and major input rule of sections 773(f)(2) and (3) of the Act apply only in circumstances involving affiliated entities, Commerce disagrees with the commenter that expressed concerns that those provisions undermine the viability of this example. As set forth in § 351.416(f)(3)(i), Commerce may determine not to apply an adjustment if it determines that either of these provisions has sufficiently addressed the cost distortions caused by a PMS, but the fact that a PMS has contributed to the distortion of costs of production is a different issue than whether or not Commerce should make an adjustment to its calculations. Likewise, some nongovernmental entity actions may distort costs of production upward while others might suppress prices and costs downward, but in either case the fact that a PMS exists that distorted costs of production during the period of investigation or review is not at issue. Again, whether Commerce determines to adjust its calculations under § 351.416(f)(3) is a different issue from whether or not a cost-based PMS exists in the first place.

xiii. Cost-based particular market situations may contribute to a sales-based PMS, as set forth in § 351.416(h).

Several commenters expressed support for the inclusion of § 351.416(h). Certain commenters suggested, however, that Commerce should modify the language of § 351.416(h) from ''may consider'' to ''will consider'' to require Commerce to always consider if a cost-based PMS contributes to a sales-based PMS. Those commenters suggested that because Commerce did not explain under what scenarios it would consider such a relationship to exist in the proposed regulation, it either must make such a consideration mandatory in every case it finds the existence of a cost-based PMS or set forth further guidance as to how it will determine a possible linkage between the two market situations. Another commenter likewise suggested that Commerce should revise its regulation to make clear that it will thoroughly review record information in every case in which it finds the existence of a cost-based PMS to determine if improper comparisons between home market or third-country market prices and export prices or constructed export prices exist, in part, because of the cost distortions caused by the cost-based PMS. In addition, still other commenters requested that Commerce issue further guidance on the standards it would use to conduct an analysis under this provision, including the burden on the party alleging a connection between a cost-based PMS and a sales-based PMS.

In addition, certain other commenters expressed concerns that paragraph (h) is inconsistent with the Act. They pointed out that as recently as 2020, Commerce agreed, stating its position that ''there is no statutory basis for Commerce to find a price-based PMS using the same data as Commerce used to find a cost-based PMS,'' [148] and suggested that the proposed regulatory provision stands for the ''exact'' opposite interpretation. Other commenters suggested further that a cost-based PMS that impacts a physical input consumed identically for the production of domestic and export sales cannot generate a divergence that would frustrate a price-to-price comparison. In support of this conclusion, they cited the aforementioned Federal Circuit decision, *Hyundai Steel Co.,* in which the court held that a PMS ''that affects costs of production would presumably affect prices for domestic sales and export sales, so there would be no reason to adjust only for home market prices.'' [149] Both sets of commenters therefore suggested that Commerce remove this provision from the regulation.

Commerce's Response:

Commerce made no revisions to § 351.416(h) in response to these comments. First, Commerce disagrees with the commenters that portrayed this as the ''exact'' same scenario which Commerce was addressing in *Cold-Rolled Steel from Korea.* Section

[146] *See Proposed Rule,* 88 FR 29864–65.

[147] *See Vicentin S.A.I.C.,* 42 F.4th at 1377; *see also Urea Ammonium Nitrate Solutions from the Republic of Trinidad and Tobago: Final Affirmative Determination of Sales at Less than Fair Value,* 87 FR 37824 (June 24, 2022), and accompanying IDM at Comment 1.

[148] *See Certain Cold-Rolled and Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2017–2018,* 85 FR 41995 (July 13, 2020) (*Cold-Rolled Steel from Korea*), and accompanying IDM at Comment 1.

[149] *See Hyundai, Steel Co.,* 19 F.4th at 1355, n. 11 (citing *Husteel Co.* v. *United States,* 426 F. Supp. 3d 1376, 1388 (CIT 2020)).

351.416(h) states that after Commerce determines the existence of a cost-based PMS, it may determine, based on record information, whether that PMS also contributed to a sales-based PMS. It does not say that it will be the only factor contributing to a sales-based PMS, or that Commerce will make its sales-based PMS determination using only the ''same data'' as it used to determine the existence of a cost-based PMS. Furthermore, Commerce does not disagree with the Federal Circuit in its logic that in many cases, if a market situation distorts costs in the home market, it may, under certain facts, equally distort prices for export sales and constructed export sales. For these reasons, Commerce has not issued a provision that states that a cost-based PMS always results in a sales-based PMS.

Instead, § 351.416(h) suggests that a cost-based PMS may, under certain facts, contribute to a circumstance or set of circumstances that prevents or prohibits a proper comparison of home market or third market sales to export or constructed export sales. Commerce knows of no statutory restriction that prevents Commerce from considering distorted costs of production as a factor, amongst others, that may inhibit comparisons between sales in different markets. However, Commerce also believes that such a determination would be case-specific and may be highly dependent on other factors also contributing to a sales-based PMS. Accordingly, Commerce does not believe it would be appropriate to incorporate standards or guidance to hypothetical scenarios in the regulation.

Likewise, we will not revise the ''may consider'' language in the regulation to ''will consider,'' as requested by certain commenters. Because, as Commerce has explained, the link between a cost-based PMS and sales-based PMS would be highly dependent on the facts of a case, Commerce believes that it would be a misuse of agency resources to conduct such an analysis every time Commerce determines the existence of a cost-based PMS. Instead, the provision allows for Commerce to conduct such an analysis when an interested party makes a sales-based PMS allegation, or if Commerce determines based on the facts before it in an investigation or administrative review that such an analysis is warranted. We have determined that making the analysis possible, but not mandatory, is the appropriate standard to apply in the regulation.

Finally, with respect to the standard which a party alleging a cost-based PMS has contributed to a sales-based PMS must meet, Commerce believes it is the same standard as set forth in § 351.416(b). The alleging party must submit a timely allegation supported by relevant information reasonably available to it in support of the allegation. We see no reason why the standard should be different for an allegation of a sales-based PMS with a cost-based PMS contribution, from that of an allegation of a sales-based PMS without a cost-based PMS contribution.

xiv. Other comments pertaining to § 351.416.

a. Commerce will not align the deadlines for filing sales-based and cost-based PMS allegations.

Several commenters suggested that Commerce should align the deadline for alleging a sales-based PMS with the deadline for alleging a cost-based PMS, claiming that it would be easier to allege that a cost-based PMS has contributed to a sales-based PMS if both deadlines are set 20 days after a respondent submits its complete response to the original questionnaire. One commenter requested that Commerce consider moving that deadline to 50 days after a respondent has submitted its questionnaire response, to allow parties time to analyze respondents' questionnaire responses fully and determine if a PMS exists.

Commerce's Response:

Commerce did not modify its deadlines in the *Proposed Rule* and will not modify its regulations to do so in the final regulation. Commerce currently has the flexibility to set such deadlines without the restriction of a regulation and there are resource-related and administrative reasons for which Commerce has been reluctant to modify these deadlines in the past. Accordingly, because we wish to retain the flexibility to set such deadlines as necessary, there will be no alignment of sales-based PMS and cost-based PMS allegation deadlines in the final regulation.

b. Commerce will not eliminate its application of a non-market economy analysis under section 773(c) of the Act, nor will it apply its PMS analysis only to non-market economies.

One commenter proposed that Commerce eliminate its application of a non-market economy analysis and instead apply a cost-based PMS analysis on a case-by-case basis to government actions it determines are distorting costs of production for all countries. That commenter suggested that such an application of the cost-based PMS provision would ensure fairer treatment for all types of economies in comparison to its non-market economy methodology.

Another commenter suggested that, rather than apply its cost-based PMS analysis to all market economies, Commerce should only apply the cost-based PMS analysis to those countries which it determines are non-market economies.

Commerce's Response:

Commerce finds no rationale to cease its application of the non-market economy analysis set forth in section 773(c) of the Act, and no reason that it should instead apply its cost-based PMS analysis only to non-market economies. Accordingly, we will not incorporate either of these suggestions into the regulation.

c. This regulation will increase transparency and accuracy in both of Commerce's PMS analyses.

One commenter expressed concerns that Commerce's PMS regulations might prove an obstacle to transparency and due process, as well as reduce the accuracy of its AD decisions.

Commerce's Response:

We disagree that by setting forth in § 351.416 Commerce's analysis for determining if a sales-based PMS and cost-based PMS exists, the regulation is creating an obstacle to transparency and due process. In fact, it is the opposite. Commerce has issued extensive proposed regulations and considered and addressed numerous comments on those regulations to clarify and provide transparency as to its market situation determinations. As a result of this regulation, Commerce's policies and considerations in determining the existence of a PMS are now expressed in greater detail and available for wider public consideration and understanding than at any time in the agency's history.

Furthermore, we disagree that this regulation in any way reduces the accuracy of our AD determinations and decisions. Instead, by addressing, in detail, market situations that prevent or prohibit a proper comparison of home market and third market sales with export and constructed export sales and governmental and nongovernmental actions and inactions that contribute to the distortion of costs of production, § 351.416 increases, rather than decreases, Commerce's ability to accurately calculate AD margins in its investigations and administrative reviews.

8. Commerce has made no changes to the proposed amendment to the CVD benefit regulation—§ 351.503.

In the *Proposed Rule,* Commerce indicated that it was revising § 351.503 to divide existing paragraph (c) into two parts. The first part reflects the existing language, with an additional explanation that Commerce is not

required to consider whether there has been any change in a firm's behavior because of a subsidy.[150] The second part states that when the government provides assistance to a firm to comply with certain government regulations, requirements, or obligations, Commerce will normally only measure the benefit of the subsidy (*i.e.,* the government assistance) and will not be required to also consider the cost to comply with those regulations, requirements or obligations.[151] These modifications to the benefit regulation were intended to codify Commerce's existing practices and policies.

Commerce received comments on these proposed changes to its benefit regulation, and based on some of the comments, it was evident that not every submitter was aware of Commerce's long-standing practices in this area of CVD law. On this basis alone we therefore believe that these additions to the regulation will provide greater transparency to the public.

In sum, Commerce received comments from nine parties on the proposed amendments in § 351.503(c). Of those, six of the commenters supported the amended language within § 351.503(c). Of the remaining three commenters, two stated that Commerce failed to provide sufficient clarity on defining the terms ''cost in complying'' and ''government-imposed regulation, or obligation.''

The new § 351.503(c)(2) states that when a government provides assistance to a firm to comply with a government regulation, requirement, or obligation, the Secretary, in measuring the benefit from the subsidy, will not consider whether the firm incurred a ''cost in complying with the government-imposed regulation, requirement, or obligation.''

In addition, one of the commenters stated that, contrary to what the proposed regulation seems to suggest, Commerce cannot determine that a countervailable subsidy exists or the amount, if any, of a benefit conferred by focusing exclusively on what the government has provided. This commenter suggested that the Act and the regulations require Commerce to determine the type of financial contribution at issue, and the benefit corresponding to that type of financial contribution, by recognizing what, if anything, the foreign manufacturer provided in return. For example, this commenter explained that when a government transfers funds to a foreign producer, Commerce cannot presume, looking exclusively at the funds transferred, that a grant has been provided. Instead, the commenter explained that Commerce must determine whether the funds constitute a loan, an equity infusion, a purchase of goods, or a purchase of services. The differences in these types of financial contributions depend on what, if anything, the foreign producer provides in return. For example, a direct transfer of funds would be a loan and not a grant if the foreign producer were to provide payments of principal or interest in return to the foreign government. Accordingly, this commenter expressed concerns with the language of § 351.503(c)(2), which it commented appears to suggest that Commerce will only consider the government's actions, and not the actions of the subsidy recipient, in determining a benefit.

Another party expressed concerns that § 351.503(c)(2) is inconsistent with section 771(6) of the Act, which the commenter stated requires Commerce to subtract from the gross countervailable subsidy received ''any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.''

That same commenter also stated that the new § 351.503(c)(2) is also inconsistent with section 771(5)(E)(iv) of the Act. Section 771(5)(E)(iv) of the Act states that when the government provides a good or service, Commerce will determine whether a benefit is provided by examining whether the price paid by the recipient for the government good or service was for ''adequate remuneration.'' The Act provides that the adequacy of remuneration will be based on ''prevailing market conditions'' that include ''price, quality, availability, marketability, transportation, and other conditions of purchase or sale.'' Therefore, this commenter suggested that section 771(5)(E)(iv) of the Act requires that Commerce account for the full costs associated with respondent's eligibility and receipt of a countervailable subsidy, while the changes to the regulation appeared to reject full consideration of all those associated costs.

Another commenter expressed concerns that § 351.503(c)(2) was overly broad and in conflict with the plain language of the statute and provided an example to support its comment. This commenter hypothesized a situation in which a foreign producer purchased land from the government for the development of its manufacturing facility and the land purchase agreement required the producer, as a condition of the land sale, to upgrade a public road for a neighboring community as a public service that otherwise would be undertaken by the government. This commenter suggested that under that proposed situation, Commerce's regulation would ignore important information as part of its analysis.

Lastly, one commenter stated that specifically in the context of environmental subsidies, Commerce's proposed across the board refusal to consider compliance costs conflicts with the Biden Administration's support for the renewable energy and climate change reduction programs. The commenter raised its concern that Commerce's proposed regulation is especially problematic with regards to compliance costs associated with environmental standards. For instance, a government may regulate the carbon emission standards of a foreign producer. That foreign producer may face significant costs in meeting the government's emission standards that may otherwise outweigh any benefit that the government would offer the foreign producer in return for meeting these standards. Nevertheless, under the proposed regulation, Commerce would disregard foreign producers' resources expended even where the overall program conferred no measurable benefit for the foreign producer. This commenter requested that Commerce must not adopt a regulation that would confer a benefit when no such benefit exists. It commented that this is not the appropriate time for Commerce to amend its existing regulations to clarify that compliance costs with a government program (*e.g.,* an incentive program relating renewable energy) cannot be considered as an offset and instead essentially treat these compliance costs as a grant.

Commerce's Response:

In response to the commenters who stated that Commerce has not provided an adequate explanation of the terms ''cost in complying with the government-imposed regulation, requirement, or obligation,'' we note that in the *Proposed Rule,* Commerce explained that much of the agency's interpretation of the Act and examples were originally set forth in the *CVD Preamble.*[152]

However, given the comments from these two commenters, Commerce has concluded that it would be prudent to repeat the discussion and explanation of compliance costs and a government-imposed mandate. Commerce believes

[150] *See Proposed Rule,* 88 FR 29867.

[151] *See id.*

[152] *See Proposed Rule,* 88 FR 29867 (citing *Countervailing Duties: Final Rule,* 63 FR 65348, 65361 (November 25, 1998) (*CVD Preamble*)).

that this explanation will not only provide a sufficient understanding of these concepts to interested parties but also provides a fuller explanation as to why Commerce has adopted this practice for at least the last 25 years.

To begin, a determination of whether a benefit is conferred is completely separate and distinct from an examination of the ''effect'' of a subsidy. In other words, a determination of whether a firm's costs have been reduced or revenues have been enhanced bears no relation to the effect of those cost reductions or revenue enhancements on the firm's subsequent performance (*e.g.,* its prices or output). In analyzing whether a benefit exists, Commerce is concerned with what goes into a company, such as enhanced revenues and reduced-cost inputs. Commerce is not concerned as much with what the company actually does with the subsidy. The agency's emphasis on reduced-cost inputs and enhanced revenues is derived from elements contained in the examples of benefits in section 771(5)(E) of the Act and in Article 14 of the SCM Agreement. In contrast, the effect of government actions on a firm's subsequent performance, such as its prices or output, cannot be derived from any elements common to the examples in section 771(5)(E) of the Act or Article 14 of the SCM Agreement.

For example, as a hypothetical, imagine a situation in which the government establishes new environmental restrictions that require a firm to purchase new equipment to adapt its facilities, and that the government also provides the firm with subsidies to purchase that new equipment. Now, however, assume that the government's subsidies do not fully offset the total increase in the firm's costs (*i.e.,* the net effect of the new environmental requirements and the subsidies leaves the firm with costs that are higher than they previously were). In this situation, the Act treats the imposition of new environmental requirements and the subsidization of compliance with those requirements as two separate actions. A subsidy that reduces a firm's cost of compliance remains a subsidy that is subject to the Act's remaining tests for countervailability even though the overall effect of the two government actions, taken together, may leave the firm with higher costs.

As another example, assume a government promulgated safety regulations requiring auto makers to install seatbelts in back seats, and then gave the auto makers a subsidy to install the seatbelts, but the subsidies did not fully offset the total increase of the auto maker's costs. Similar to the environmental restriction subsidies described above, we would draw the same conclusion from this situation. In the two examples, the government action that constitutes the benefit is the subsidy to install the equipment, because this action represents an input cost reduction. The government action represented by the requirement to install the equipment will not be construed as an offset to the subsidy provided to reduce the costs of installing the equipment.

Thus, if there is a financial contribution and a firm pays less for an input than it otherwise would pay in the absence of that financial contribution (or receives revenues beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit element is concerned. Commerce need not consider how a firm's behavior is altered when it receives a financial contribution that lowers its input costs or increases its revenues.

Section 771(5)(C) of the Act explains that the ''benefit'' and the ''effect'' of a subsidy are two separate concepts. While there must be a benefit for a subsidy to exist, section 771(5)(C) of the Act expressly provides that Commerce ''is not required to consider the effect of the subsidy in determining whether a subsidy exists.'' This message is reinforced by the SAA,[153] which states that ''the new definition of subsidy does not require that Commerce consider or analyze the effect (including whether there is any effect at all) of a government action on the price or output of the class or kind of merchandise under investigation or review.''

Paragraph (c) of § 351.503 in the current regulation further reinforces this principle by stating affirmatively that, in determining whether a benefit is conferred, Commerce is not required to consider the effect of the government action on the firm's performance, including its prices or output, or how the firm's behavior otherwise is altered.

With respect to the statement made by one of the commenters that Commerce is required to consider what a foreign manufacturer ''provided in return'' in order to determine the type of financial contribution provided, Commerce clarifies that the payment for a government good or service or the payment of interest or principal on a loan is not the same thing as a ''cost of compliance,'' as set forth under § 351.503(c).

The methodologies for calculating the benefit for a financial contribution provided in the form of a loan or the provision of a good or service are set forth within both the Act and the current CVD regulations. To use one of the examples above, assume a government promulgated safety regulations requiring automakers to install seatbelts in back seats and then gave the auto makers a subsidy to install the seatbelts. The government subsidy to the automaker was in the form of a loan. While we would not consider and offset the cost of the automaker for the cost and installation of the seatbelts in the calculation of the loan benefit, we would still calculate the loan benefit as required by the methodology set forth in the Act and in our regulations by taking the difference between what the automaker paid on the government loan and the amount of interest the automaker would have paid on a comparable loan that it could actually obtain on the market. The decision by the government to provide a subsidy to assist a firm with complying with an existing government-imposed regulation, requirement or obligation is a separate and discernible action from the action in which the government imposed the regulation, requirement, or obligation. Therefore, each of these actions is treated separately under the Act.

However, on a more basic level, when a government imposes a regulation, requirement or obligation on a party, a government has no further obligation to provide assistance to a party to comply with that regulation, requirement, or obligation. For example, governments normally impose an obligation on parties to pay taxes. However, if the government, through an action or government obligation, then exempts, in whole or part, the taxes that a particular party is obligated or required to pay, then that exemption is a financial contribution, and if that program is found to be specific and provide a benefit, the tax exemption could be determined to be a countervailable subsidy. In other words, just as the tax obligation is separate from the countervailable exemption, so too would a government requirement that automobiles carry seatbelts be separate from a government subsidy to pay for some of the compliance costs to install seatbelts in the first place.

In response to the comment that § 351.503(c)(2) is inconsistent with section 771(6) of the Act, which the commenter stated requires Commerce to subtract from the gross countervailable subsidy received ''any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,''

[153] *See* SAA at 926.

Commerce must first note that this reading of section 771(6) of the Act is incorrect. Section 771(6) of the Act explicitly states that ''the administering authority *may* subtract from the gross countervailable subsidy'' (emphasis added). The statutory use of the word ''may'' instead of the word ''shall'' or ''will'' does not establish a requirement but provides the administering authority with a level of discretion with respect to the criteria set forth within section 771(6) of the Act.

In addition, the commenter also misunderstands the use of the term ''application fee, deposit, or similar payment paid.'' The costs for complying with an imposed obligation or requirement are not like an application fee, deposit, or similar payment to receive the benefit of a countervailable subsidy. For example, if the government requires that an industrial mill remove harmful materials from industrial gases before being released into the environment and the mill purchases a scrubber to comply with that requirement, then the mill did not make an ''application fee, deposit, or similar payment'' within the meaning of section 771(6) of the Act. The industrial mill simply paid for a piece of capital equipment. That payment was not a cost of receiving a subsidy, it was the simple exchange of money for a good.

Indeed, the commenter's interpretation of section 771(6) of the Act is inconsistent with how subsidies and the costs of compliance operate. Under an interpretation of the Act proposed by the commenter, assume that the government imposes a 30 percent income tax on all firms but provides high-tech firms with a 50 percent reduction in their income taxes. Under the commenter's interpretation of section 771(6) of the Act, Commerce would be required to deduct the amount of income taxes the firms paid from the amount of the 50 percent income tax subsidy reduction the high-tech firms received because the income taxes they were required to pay constitute an ''application fee, deposit, or similar payment paid'' to qualify or receive the benefit from the income tax subsidy. Accordingly, the commenter misunderstood section 771(6) of the Act and, consequently, the language of the new § 351.503(c)(2) of our regulations.

As noted above, this commenter also expressed concerns that the new § 351.503(c)(2) of our regulations is inconsistent with section 771(5)(E)(iv) of the Act. Section 771(5)(E)(iv) of the Act states that when the government provides a good or service, Commerce will determine whether a benefit is provided by examining whether the price paid by the recipient for the government good or service was for ''adequate remuneration.'' The adequacy of remuneration will be based on ''prevailing market conditions'' that include ''price, quality, availability, marketability, transportation, and other conditions of purchase or sale.'' Therefore, the commenter suggested that section 771(5)(E)(iv) of the Act requires that Commerce account for the full ''costs'' associated with a respondent's eligibility and receipt of a countervailable subsidy. In putting forth such an interpretation, the commenter provided no further support other than a general allegation. Further, in alleging that Commerce must account for ''costs'' under that statutory provision, the commenter did not note that term ''costs'' does not actually appear in section 771(5)(E)(iv) of the Act.

In response, it is worth pointing out that § 351.503(c)(2) refers to ''subsidies'' and ''assistance'' provided to comply with a government-imposed regulation, requirement, or mandate. Thus, it is clear from the language of § 351.503(c)(2) that tax incentives, loans, and grants would fall with the purview of this new regulation. Under section 771(5)(E) of the Act, the concept of ''adequate remuneration'' and ''prevailing market conditions'' do not apply to subsidies provided in the form of tax incentives, grants, or loans. However, if the subsidy or assistance at issue within § 351.503(c)(2) did take the form of a provision of a good or service, then the benefit calculation of the provision of the good or service would certainly be determined based upon the criteria set forth under section 771(5)(E)(iv) of the Act.

In addition, as noted above, one commenter expressed concerns that Commerce's modification to § 351.503(c) is overly broad and in conflict with the plain language of the Act based on a hypothetical situation. Specifically, that commenter suggested that if a foreign producer purchased land from the government for the development of its manufacturing facility and the land purchase agreement required the producer, as a condition of the land sale, to upgrade a public road for a neighboring community as a public service that otherwise would be undertaken by the government, then under the contract, the producer would be required to build the road and the government would be required to reimburse the producer for 80 percent of the road construction cost. Under that hypothetical, the producer would absorb 20 percent of the cost, but the commenter stated that under Commerce's proposed regulatory changes, the road building obligation under the land purchase agreement could be misconstrued as a ''government-imposed mandate,'' the foreign producer's road building cost as a ''compliance cost,'' and the government's reimbursement under the contract as ''compliance assistance.'' The commenter expressed concerns that Commerce would therefore, under the revised regulation, misinterpret the contract, misinterpret the condition of sale, and incorrectly ignore the respondent's contribution and costs. According to the commenter, Commerce would consider only the value of the government's reimbursement as a grant when, according to the contract, the foreign producer was paying a purchase premium for the land by incurring costs in the amount of 20 percent of the construction of a road.

Commerce disagrees with the presumed outcome of the commenter's hypothetical. Whether a government act or program conveys a countervailable subsidy is solely determined under the criteria that is set forth under the Act and the CVD regulations, and not under contract law. If a government signs a contract to provide a company with $200 million to build a manufacturing facility, the fact that there is a contract to provide the recipient with a $200 million grant does not allow the government grant to fall outside the scope of the CVD law.

In addition, these types of hypotheticals demonstrate why such examples may not always be helpful in applying a practice or preparing a regulation. Any decision as to the countervailability of a government action or program, and the calculation of any benefit conferred by that government action, can only be based on a complete set of facts with respect to the provision of government assistance. One can make few general observations with respect to this example because it lacks several critical facts and details. Assuming the provision of land was specific (from the example the commenter concedes that there is a financial contribution), the analysis of whether there is a benefit would be made under section 771(5)(E)(iv) of the Act and § 351.511. However, based on the lack of specifics within the example, it would be useless to opine as to how this example would be treated under § 351.503(c).

Even with respect to the analysis of whether the provision of land was provided for adequate remuneration as defined by the statute and CVD regulations, there are many questions which remain outstanding under such a hypothetical as to how the producer's

absorption of 20 percent of the road construction should be treated. For example, for the provision of land to other firms, Commerce would need to know if the government required that those firms pay the full cost to the company to construct the roads at issue. Commerce would also need to know the details as to the criteria listed in the land purchase contracts between the private parties, and, when the land was sold to the producer, and if the government included land that had the sole road that connected the neighboring community to other communities in the area. Furthermore, Commerce would want to know, as part of its analysis, if after construction the producer had sole use of that road. Therefore, we disagree that the outcome of this hypothetical scenario can be determined under the limited set of facts put forth by the commenter. Furthermore, we disagree with the commenter's assumption that Commerce would ''misconstrue'' or ''misunderstand'' anything from such a contract on the administrative record because of the language being added to § 351.503(c).

In response to the commenter's policy comments on environmental subsidies and the current administration's support for renewable energy and climate change reduction programs, any decision of whether a government action or program provides a countervailable benefit can only be made with respect to the criteria that are set forth within the Act and the CVD regulations. Nowhere in § 351.503(c) is Commerce proposing to treat compliance costs as a grant, and we have fully described above how compliance costs are treated with respect to our analysis of the benefit conferred by the provision of a countervailable subsidy. Lastly, we agree with the commenter that Commerce's regulations should not confer a benefit when no such benefit exists, and Commerce sees nothing in the modifications to § 351.503(c) which would do such a thing.

9. Commerce has made certain changes to the proposed amendment to the CVD loan regulation—§ 351.505.

For the regulation pertaining to loans, Commerce has determined to move current § 351.505(d) to a new § 351.505(e) and add a new provision in paragraph (d) titled ''Treatment of outstanding loans as grants after three years of no payments of interest or principal.'' While it is rare to encounter this issue, Commerce has concluded that it is important to codify a practice and methodology to address situations where the government has not collected any loan payments for a long period of time to promote both clarity and consistency in our administration of the CVD law.

The revisions to § 351.505(d) address loans upon which there have been no payments of interest and principal over a long period of time. Our current practice is that when we examine these types of loans in which there have been no payments of either interest or principal over an extended period of time, we treat them as interest-free loans. It is evident, however, that if the foreign government or a government-owned bank has not collected payments on an outstanding loan after a three-year period, the foreign government made a decision to simply not collect loan payments at all. Commerce has therefore created this provision to address the scenario if no loan payments have been made to the government or a government-owned bank on a loan for three years. Under that situation, Commerce will normally treat the outstanding loan as a grant. To ensure consistency with section 771(5)(E)(ii) of the Act, we also are stating that we would not treat this type of loan as a grant if the respondent can demonstrate that this nonpayment of interest and principal is consistent with the terms of a comparable commercial loan that it could obtain on the market.

We received comments from 11 interested parties with respect to the amendment incorporated into § 351.505(d), with six of the parties supporting this new regulation on the treatment of loans. However, one of the parties supporting this new regulation stated that Commerce should clarify: (1) that the benefit should include both outstanding principal and any unpaid accrued interest; (2) that for loans with a balloon payment of principal due at the end of term, the nonpayment of interest should be sufficient grounds to treat the loan as a grant; and (3) for uncreditworthy firms, accrued interest should be calculated using an uncreditworthy benchmark.

In addition, Commerce received the following comments on the proposed change to § 351.505(d):

- One commenter suggested that Commerce should defer to the actual terms of the loan contract and that the three-year triggering period does not account for different payment terms that may be present in the loan contract;
- A second commenter stated that it was not clear whether the exception regarding whether the nonpayment is consistent with the terms of a comparable commercial loan applies to loans made under ''balloon'' payment terms (*i.e.,* loans that do not require payments for an extended period and then require larger interest and principal payments once the grace period has expired);
- A third commenter stated that a loan is a different financial contribution from a grant, as a loan requires an obligation of repayment while a grant does not require such an obligation, and a loan is usually provided by a bank, whereas grants are usually provided by a government;
- A fourth commenter expressed concerns that Commerce's proposed change shifts the burden to a respondent to show that it could obtain a comparable loan, and that such a shift in a burden of provision was inappropriate; and
- A fifth commenter suggested that that § 351.505(d) is not needed because the existing regulations already allow Commerce to decide when a loan may be treated as a grant.[154]

In addition, some of the commenters stated that the three-year period set forth by § 351.505(d) is arbitrary, particularly because in the United States, the statutes of limitation set by individual states on debt collection range from three to 15 years for written contracts, with six years being the most common threshold.

Commerce's Response:

In the *Proposed Rule,* we proposed a three-year period as the triggering time period for treating a loan as a grant.[155] After consideration of the concerns raised by the commenters, we continue to believe that a three-year period is the appropriate amount of time for which nonpayment on the outstanding loan can lead to Commerce treating the loan as a grant. Respondents may demonstrate, however, that the loan should not be treated as a grant by showing that they could obtain a comparable loan with these terms of nonpayment.

As noted above, one of the parties stated that Commerce should clarify that the benefit should include both outstanding principal and any unpaid accrued interest. We agree that it is the normal practice of Commerce to include both the amount of principal and any accrued, unpaid interest that would have been paid when a government forgives or assumes a firm's debt when that debt obligation was provided in the

[154] *See* § 351.505(d)(2) (allowing Commerce to treat the loan as a grant if the event upon which repayment depends is not a viable contingency); *see also* § 351.508 (allowing Commerce to treat the total of principal and interest as benefits in the case of an assumption or forgiveness of a debt).

[155] *See Proposed Rule,* 88 FR 29867.

form of a loan.[156] However, with respect to the situation addressed under § 351.505(d), there has not been a formal case of debt assumption or forgiveness. In such a situation, the government, for whatever reason, has simply stopped collecting payments on the outstanding loan. In a prior period of review in which that loan was outstanding, we may have already treated the nonpayment on the loan as an interest-free loan, and thus, calculated a benefit based on the amount of interest paid on the loan (*i.e.,* zero) and the amount of interest that would have been paid on a loan from a commercial bank. Therefore, in those instances, Commerce determines that it would be inappropriate to treat accrued, unpaid interest as a grant because we had already calculated a countervailable benefit to account for that unpaid interest. Because whether to include any accrued, unpaid interest in the benefit calculation will be dependent on case-specific facts, we have not included that suggested provision within § 351.505(d). Instead, the decision of whether to include any accrued, unpaid interest in the benefit calculation will be made on a case-by-case basis. If there is a determination that the firm was uncreditworthy at the time the relevant government-provided loan was made, we agree with that commenter that any accrued interest that is to be treated within our benefit determination will be calculated using an uncreditworthy benchmark as set forth within § 351.505.

That same commenter also suggested that for loans with a balloon payment of principal due at the end of term, Commerce should indicate in the regulation that the nonpayment of interest should be sufficient grounds to treat the loan as a grant.

With respect to this comment and other comments made with respect to ''balloon'' loans, such loans would fall within the definition of ''comparable commercial loans'' under both section 771(5)(E)(ii) of the Act and § 351.505 of the CVD regulations. Therefore, Commerce has concluded that the three-year trigger period, in addition to taking into account the exception provided for receipt of a comparable commercial loan, should also consider the terms of the loan contract. Thus, we have modified the final version of § 351.505(d). Specifically, the additional language will state that the Secretary will normally treat a loan as a grant if ''no payments on the loan have been made'' (versus the proposed language—''no payments of interest and principal have been made'') in three years unless the loan recipient can demonstrate that nonpayment is consistent with the terms of a comparable commercial loan it could obtain on the market ''or the payments on the loan are consistent with the terms of the loan contract.''

In response to the concerns raised by other commenters, Commerce agrees that loans require a repayment obligation and grants do not carry that repayment obligation. However, once a governmental provision of funds no longer has an obligation of repayment, or once the government waives or no longer collects repayment of those funds, then those funds (*i.e.,* loans) effectively become a grant, and Commerce has an established practice of treating those funds as a grant. Moreover, whether a loan is normally provided by a bank or grants are normally provided by a government is irrelevant as to whether a loan or a grant provided by a government constitutes a financial contribution and a benefit under the Act.

With respect to the issue of burden shifting, we disagree that this regulatory change shifts a burden onto a respondent to show that it could obtain a comparable loan. Only the respondent has the information to demonstrate that the nonpayment on the outstanding loan is consistent with the terms of a comparable commercial loan it could obtain on the market, or that the nonpayment on the loan is consistent with the terms of the loan contract. Notably, the language regarding a comparable commercial loan that a recipient could obtain on the market is taken directly from section 771(5)(E)(ii) of the Act.

Commerce does not dispute the claim that statutes of limitation set by individual states on debt collection range from three to 15 years. However, we do not believe that such a fact is relevant to this change in the regulation. Section 351.505(d) does not address a situation where there is an ongoing legal dispute between the government and an individual firm regarding a debt that is being contested or where the government is seeking to collect a debt from the loan recipient. Instead, the regulation addresses a situation where the government, for whatever reason, is no longer requesting payment from a recipient of a government loan. If a loan recipient can demonstrate that the outstanding debt is under a legal dispute with the government or that the government is actively seeking loan payment from the recipient, then this regulatory provision will not apply, and Commerce will not treat that disputed loan debt as a grant under this provision.

Regarding the three-year ''triggering-period,'' as Commerce explained in the *Proposed Rule,* Commerce first sought to determine whether there was a clear standard used within the banking sector with respect to the treatment of ''bad debt'' or the treatment of outstanding loans in which payment has not been made based on the terms of the loan contract.[157] Such standards normally provide discretion to the individual bank to determine when it has no reasonable expectations of recovering the contractual cash flows on a financial asset. Unfortunately, Commerce determined that these practices did not provide sufficient administrative and public clarity and guidance for purposes of the CVD regulations.[158]

Based upon these conclusions, Commerce decided to adopt a three-year period, which we believe is appropriate after considering all of the comments we received on this provision. We believe that a three-year period is a reasonably long period of time because it will only apply to a very limited number of loans. To be clear, Commerce rarely encounters investigated loans in which the loan terms do not require the payment of interest for an entire three-year period. In addition, we rarely have investigations on government loan programs in which it is alleged that the government does not require at least payment of interest or principal within a three-year period, or that the regulations under which the investigated loan program operates does not require any loan payment within a three-year period. Furthermore, although some commenters characterized a three-year period as ''arbitrary,'' notably none of the commenters provided a useful alternative period.

Nevertheless, it is important to emphasize that under § 351.505(d), the three-year period provides an exception and not the rule. If the loan recipient can demonstrate that nonpayment is consistent with the terms of a comparable commercial loan it could obtain on the market, then the three-year triggering period will not apply. Furthermore, as we explain above, we have modified the proposed regulation to also allow a loan recipient to demonstrate that the payments on the loan are consistent with the terms of the loan contract. Accordingly, the three-year triggering period under this regulation will only apply if a loan recipient cannot show either of these situations to be true.

[156] *See* § 351.505(a).

[157] *See Proposed Rule,* 88 FR 29867.

[158] *Id.*

In response to the comments that Commerce already has the ability to treat a loan as a grant under existing §§ 351.505(d) introductory text and (d)(2) and 351.508, we note that while we do have current regulations that allow Commerce to decide when a loan may be treated as a grant, the new regulation at § 351.505(d) applies to loans that would not fall under the current regulations at §§ 351.505(d)(2) and 351.508. Accordingly, we disagree that Commerce already has the ability to treat loans such as this as grants and believe that this additional modification to the regulation is necessary.

Lastly, we note that Commerce is moving current § 351.505(d) to a new § 351.505(e) which addresses the treatment of a contingent liability interest-free loan. Under this current provision, Commerce will treat a contingent liability interest-free loan as a grant, if at any point in time, Commerce determines that the event upon which repayment depends is not a viable contingency. However, this regulation does not address the situation where the recipient firm either has taken the required action or achieved the contingent goal and the government has not required repayment of the contingent loan. While Commerce considers a future amendment to this section of the loan regulation to account for non-repayment when the recipient has met the contingent action or goal and the government has not taken repayment, for now Commerce may address this issue under the new § 351.505(d).

10. Commerce has made certain changes to the proposed amendment to the CVD equity regulation at § 351.507.

Commerce is making two significant changes in this final rule to its equity regulation. First, it is modifying current § 351.507(c) by moving the existing language to a new § 351.507(d) and adding a new provision in paragraph (c), titled ''Outside investor standard.'' This outside investor standard codifies Commerce's long-standing practice in which the analysis of equity is conducted with respect to whether an outside private investor would make an equity investment into that firm under its usual investment practice, not whether a private investor who has already invested would continue to invest.

Second, Commerce is adding language to the description of the allocation of the benefit in the new § 351.507(d). Currently, the benefit conferred by equity will be allocated over the same time period as a non-recurring subsidy under § 351.524(d), which is the average useful life (AUL) of assets. This standard works well for the vast majority of the cases in which Commerce finds a countervailable equity benefit, which usually has been the case with respect to an equity infusion into a state-owned steel company. However, in a few cases, such as *DRAMs from Korea,*[159] Commerce has determined that the AUL of the assets results in an unreasonable period of time in which to provide relief to the domestic industry from unfair and distortive foreign government subsidies, counter to the purpose of the CVD law. To prevent such an unfair and distortive allocation, the modified language of § 351.507(d) will provide that the benefit conferred by an equity infusion shall be allocated over a period of 12 years or the same time period as a non-recurring subsidy under § 351.524(d), whichever is longer.

In the *Proposed Rule,* Commerce proposed new regulatory language and provided an extensive background on Commerce's 40-year history in implementing and enforcing the outside investor standard.[160] One commenter noted that the first sentence of the new proposed § 351.507(c) referred to a ''new private investor,'' but then in the second sentence referred to both an ''outside private investor'' and a non-outside ''private investor.'' That commenter suggested that Commerce clarify that the first sentence was intended to refer to a ''new outside private investor.'' Commerce agrees that such a suggestion would be appropriate and provide clarity to the regulation, and it has modified the regulation in accordance with that suggestion in the final rule.

Otherwise, Commerce has determined to make no further changes to its proposed § 351.507(c) and (d). Commerce's provision of the history and reasoning behind both changes is set forth extensively in the *Proposed Rule,* and Commerce will not reiterate that entire history or reasoning in this preamble to the final rule.

In response to our request for comments on our *Proposed Rule,* we received 15 comments from interested parties to the changes in our equity regulation with nine of these parties supporting the revisions. The six parties that objected to the proposed revisions to the equity regulation objected to both of the proposed changes to the regulation. We are addressing the challenges to the two changes separately below.

A. Commerce's codification of its outside investor standard is lawful and reasonable.

With respect to the outside investor standard, some commenters expressed concerns that Commerce failed to consider the viewpoint of an ''inside'' investor, and they alleged that such a failure could not be reconciled with section 771(5)(E) of the Act, which states that ''a benefit shall normally be treated as conferred where there is a benefit to the recipient if the investment decision is inconsistent with the usual investment practice of private investors, including the provision of risk capital, in the country in which the equity infusion is made.'' Section 351.507(a)(1) has the same language. Thus, those commenters commented that both the Act and the regulations do not make a provision for ''outside private investors,'' and that the only statutory language pertains to ''private investors.'' Those commenters stated that if a government with an existing investment in a company makes an equity investment on terms that comport with the terms that ''inside'' private investors with similar investments would have accepted, then the investment decision is consistent with the usual investment practice of private investors and there is no countervailable benefit under the statute. These commenters also stated that there are essentially no differences in the motivation and analysis in the investment decisions between internal private investors (*i.e.,* owner-investors) and outside private investors.

One of the commenters stated that a rational investment decision based on commercial principles does not exclude the reason for continuing to invest to protect income of previous investments, citing the 1986 CVD investigation determination in *Groundfish from Canada.*[161] Likewise, that commenter also noted that in a 1989 CVD investigation, *Steel Wheels from Brazil,*[162] Commerce stated that a ''a rational investor does not let the value of past investments affect present or future decisions,'' which demonstrates the consistency of business logic between inside and outside investors.[163]

Another commenter noted that in the 1993 CVD investigation determination in *Certain Steel Products from*

[159] *See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea,* 68 FR 37122 (June 23, 2003) (*DRAMs from Korea*), and accompanying IDM at Comment 8.

[160] *See Proposed Rule,* 88 FR 29867–69.

[161] *See Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish from Canada,* 51 FR 10041, 10047 (March 24, 1986) (*Groundfish from Canada*).

[162] *See Final Affirmative Countervailing Duty Determination; Steel Wheels from Brazil,* 54 FR 15523, 15529–30 (April 18, 1989) (*Steel Wheels from Brazil*), and accompanying IDM at Comment 10.

[163] *Id.*

Austria,[164] Commerce explained that a distinction between inside investors and outside investors is unreasonable stating that ''{Commerce} has expressed the view that the perspectives of inside and outside investors cannot legitimately be distinguished.'' [165] As such, that commenter pointed out that Commerce stated that an inside investor can therefore act with the same rational motivations as an outside investor and ''not let the returns of past investments affect present or future decisions.'' [166] This commenter stated that even though the question in *Certain Steel Products from Austria* was whether Commerce should adopt a different standard for inside investors, Commerce's reasoning is also applicable to the inverse—an outside investor standard is also unreasonable because there is no legitimate reason to distinguish between the two.

Lastly, one commenter generally objected to Commerce's use of an outside investor standard, arguing that it is not reasonable because Commerce can neither categorically determine that no debt-to-equity conversion can meet the reasonable investor test, nor categorically determine that no inside investor is able to make an investment that will generate a reasonable rate of return within a reasonable period of time.

Commerce's Response:

At its core, the criticisms of Commerce's outside investor standard are criticisms of its overall equity analysis which has been in place since at least 1986. As noted, Commerce explained the history of this practice and the reasoning behind its policy and practices in the *Proposed Rule.*

As a preliminary point, Commerce fundamentally disagrees that section 771(5)(E) of the Act, which states that ''a benefit shall normally be treated as conferred where there is a benefit to the recipient if the investment decision is inconsistent with the usual investment practice of private investors, including the provision of risk capital, in the country in which the equity infusion is made,'' [167] is in any conflict with the outside investor standard.

Before the enactment of the URAA on December 8, 1994, which implemented the changes to the Act as a result of the Uruguay Round and the creation of the WTO, and the SCM Agreement, specifically, section 771(5) of the Act defined one type of subsidy as the provision of capital on ''terms inconsistent with commercial considerations.'' [168] The URAA amended the Act and stated that a benefit is conferred in the case of an equity infusion ''if the investment decision is inconsistent with the usual investment practice of private investors.'' However, while the language changed from ''terms inconsistent with commercial considerations'' to ''inconsistent with the usual investment practice of private investors,'' this did not denote a change in the benefit analysis with respect to whether a firm is equity-worthy.

The SAA reveals that under the revised benefit section under the URAA at section 771(5)(E) of the Act, the only replacement with respect to our established methodology in determining whether a benefit exists was with respect to the provision of goods and services and in determining whether there is a benefit conferred by a government loan guarantee.[169] In addition, § 351.507(a)(4) of our current CVD regulations states that the Secretary will consider a firm to have been equity-worthy if the Secretary determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. In determining whether a benefit is conferred within the meaning of section 771(5)(E) of the Act, we note that the Act does not define ''the usual investment practice of private investors.'' However, the CVD equity regulation states that a reasonable private investor will make its investment decisions based on whether the investment will ''generate a reasonable rate of return within a reasonable period of time.'' [170] This standard is set forth in § 351.507(a)(4) and is taken from the *1989 Proposed Rules.*[171] Thus, the standard used in the examination of whether there is a benefit conferred by the government provision of equity was identical under both section 771(5)(E) of the Act and section 771(5) of the pre-URAA version of the Act. That standard was also addressed by the CIT in the Court decisions, *BSC I* [172] and *BSC II.*[173]

At the time of the CIT decisions in *BSC I* and *BSC II,* section 771(5) of the Act defined one type of subsidy as the provision of capital on ''terms inconsistent with commercial considerations.'' [174] In *BSC II,* the CIT relied upon the definition of ''commercial considerations'' that was established a year earlier in *BSC I.* In *BSC I,* with respect to the provision of equity capital, the CIT construed the ''commercial considerations'' test to mean that an investment is consistent with commercial considerations if a reasonable investor could expect a reasonable rate of return on its investment within a reasonable period of time. Moreover, pertaining to the question of whether government funds are provided to a company under conditions inconsistent with commercial considerations, in 1979, the Subcommittee on Trade of the House Committee on Ways and Means observed that in its interpretation of the Act ''with regard to the provision of capital, 'commercial considerations' shall mean consideration of whether at the time the capital is provided, the recipient is required, and can be expected within a reasonable period of time, to derive from its operations a reasonable rate of return on its invested capital.'' [175]

Thus, it is clear from the language in the Act, the CVD regulations, and the legislative history that ''the usual investment practice of private investors'' is that a reasonable private investor will make its investment decisions based on whether the investment will ''generate a reasonable rate of return within a reasonable period of time.'' Otherwise, what ''private investors'' Commerce considers reasonable for purposes of its equity analysis was left by Congress for Commerce to discern through its practice and regulations over time. As Commerce explained in the *Proposed Rule,* over a 40-year span of time, Commerce concluded that the standard of the private investor should be based on an outside private investor and is now codifying that practice.

In response to the claims that there is ''no'' difference in the motivations and

[164] *See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37249 (July 9, 1993) (*Certain Steel Products from Austria*), at the General Issues Appendix.

[165] *Id.*

[166] *Id.*

[167] *See* section 771(5)(E) of the Act.

[168] *See* Trade Agreements Act of 1979, Public Law 96–39, 80 Stat. 144 (July 26, 1979) (Trade Agreements Act of 1979).

[169] *See* SAA at 927.

[170] *See* § 351.507(a)(4).

[171] *See Countervailing Duties Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366, 23381 (May 31, 1989) (*1989 Proposed Rules*).

[172] *See British Steel Corp.* v. *United States,* 605 F. Supp. 286 (CIT 1985) (*BSC I*).

[173] *See British Steel Corp.* v. *United States,* 632 F. Supp. 59 (CIT 1986) (*BSC II*).

[174] *See* Title I of the Trade Agreements Act of 1979 (adding section 771(5) of the Act, which defined the term ''subsidy'').

[175] *See* Summary of Recommendations in Legislation Implementing the Multilateral Trade Negotiations, 96th Cong., 1st Sess. 4 (Comm. Print 21 (1979)).

investment analysis between owner-investors and outside private investors, Commerce must highlight that through 40 years of practice, many interested parties have disagreed with that assessment. For example, in the aforementioned *Steel Wheels from Brazil,* when Commerce evaluated government equity infusions from the point of view of a private outside investor, a respondent argued that its motive as an owner-investor was to maximize average returns on its past and future investments into the steel company, not to marginal returns on investments as an outside investor would.[176] Likewise, in *Stainless Steel Plate from the United Kingdom,*[177] the respondent claimed that by focusing exclusively on considerations that would motivate the investment decisions of an outside investor, Commerce incorrectly found British Steel Corporation (BSC) to be unequity-worthy during the review period. The respondent argued that unlike an outside investor, as an owner it had to consider taking steps to minimize BSC's losses and to encourage the company's return to profitability. Furthermore, in the *Certain Steel Products from Austria* investigation, respondents argued that an inside investor's decision may reflect a desire to reduce or forestall an expected loss rather than to increase returns on investment. They argued that an inside investor may make an additional investment to help save the firm from insolvency.[178]

In addition to the respondents stating that there are differences in the motivations and investment analysis between owner-investors and outside private investors, the CIT has explicitly recognized these differences in motivations. The CIT in *BSC II* acknowledged that while it may make sense for an owner to want to continue to run a loss-making operation so long as variable costs are recovered, this standard is inapposite to investment decisions by investors acting according to economically rational considerations to look for a return on investment with a reasonable time.[179] Likewise, in *Hynix Semiconductor, Inc.,*[180] the CIT expressly affirmed Commerce's approach that ''the existence and status of previous investments in a company are extraneous considerations when weighing new investment in the same company.'' [181] The CIT called this approach the ''expected utility model,'' which was another name for the outside investor standard, and relied on *BSC II* in ruling against the respondent plaintiff's argument that Commerce should take the perspective of an existing investor considering a new investment to bolster prior investments.[182]

All of these arguments and decisions reflect what Commerce explained in the *Proposed Rule:* the motivations of an owner-investor can, and frequently do, differ from that of an outside private investor, and Commerce's practice, and now regulations, consider the actions of a reasonable outside private investor in its equity analysis. Forty years of precedent and practice demonstrate that inside investors sometimes may base investment decisions on criteria other than whether the investment will ''generate a reasonable rate of return within a reasonable period of time,'' while outside private investors will generally not be inclined to base investment determinations on those other criteria.

In response to the statements by the one commenter with regard to *Groundfish from Canada* and *Steel Wheels from Brazil,* there is no validity to the commenter's points because Commerce believes that the commenter misunderstood the Commerce determinations made in those cases. In both cited cases, Commerce explicitly rejected the decisions of the insider investor to make additional equity investments into financially troubled companies because Commerce recognized that the motivations of inside investors may be different from those of outside private investors.[183]

With respect to the commenter that quoted certain language from *Certain Steel Products from Austria* to support its claim against the outside investor standard, we also believe that commenter may be confused as to the details of that investigation. In the *Certain Steel Products from Austria* investigation, respondents stated that an inside investor may make an additional investment to help save the firm from insolvency. Therefore, the respondents were essentially arguing that with respect to an equity analysis for investments made by owners, Commerce should adopt a different analysis specifically for inside investors that may have different motivations than those of an outside investor. Commerce rejected this argument, declining to create two investor standards and apply two investor equity tests. In any case, that is not the issue with respect to this regulation. Here, the issue is Commerce codifying its single practice of applying an outside investor standard in an equity analysis.

Finally, in response to the commenter who suggested that Commerce cannot categorically determine either that no debt-to-equity conversion can meet the reasonable investor test, nor that no inside investor is able to make an investment that will generate a reasonable rate of return within a reasonable period of time, we believe that commenter misunderstood Commerce's practice. As we explained in the *Proposed Rule,* Commerce has been using the outside investor standard since at least 1986. In all that time, Commerce has never claimed that a debt-to-equity conversion cannot meet the equity-worthy standard of generating a reasonable rate or return within a reasonable period of time. In addition, Commerce has never made a comprehensive finding that an inside investor is unable to make an investment that would generate a reasonable rate of return within a reasonable period of time. This amendment to § 351.507 incorporates into the equity regulation our long-standing practice with respect to the use of an outside investor standard, but it in no way suggests changes to the agency's existing practice as suggested by that commenter. All of Commerce's determinations made with respect to the provision of equity are made on a case-by-case basis with an analysis of all the facts on the record in a manner consistent with the Act and the CVD regulations. There is no comprehensive exception or policy whereby all debt-to-equity conversions or investments made by an insider investor fail the standard of the equity-worthy test of being able to generate a reasonable rate of return within a reasonable period.

The codification of our outside investor standard continues our longstanding practice of examining whether a provision of equity, be it direct through new funds or through a debt-to-equity conversion, confers a countervailable benefit by examining whether the provision of equity will generate a reasonable rate of return within a reasonable period of time. This means that when there is a private inside investor or a private debtor converting existing debt in a firm into equity, our equity analysis will be based

[176] *See Steel Wheels from Brazil,* 54 FR 15529 and IDM at Comment 10.

[177] *See Stainless Steel Plate from the United Kingdom; Final Results of Countervailing Administrative Review,* 51 FR 44656 (December 11, 1986) (*Stainless Plate from the United Kingdom*).

[178] *See Certain Steel Products from Austria,* 58 FR 37249.

[179] *See BSC II,* 632 F. Supp at 64–65.

[180] *See Hynix Semiconductor, Inc.* v. *United States,* 425 F. Supp. 2d 1287 (CIT 2006) (*Hynix Semiconductor, Inc.*).

[181] *Id.,* 425 F. Supp. 2d at 1313.

[182] *Id.*

[183] *See Groundfish from Canada; see also Steel Wheels from Brazil.*

on the standard of an outside private investor (*i.e.,* whether that new investment will generate a reasonable rate of return within a reasonable period of time). If we determine that a private insider investor or private party converting debt-into-equity provides a new equity investment that is consistent with the outside investor standard, then we will normally consider that private investor prices are available within the meaning of § 351.507(a)(2) and will use those prices in determining whether the government provision of equity confers a benefit. In situations where the government is the sole owner and investor into a firm, we will also use the outside private investor standard to determine whether the government provision of equity into the firm will generate a reasonable rate of return within a reasonable period of time. Other criteria used by the government such as trying to rescue an insolvent firm or recover its previous investments will not be consistent with ''the usual investment practice of private investors.''

B. Commerce's modification to the allocation of an equity benefit is reasonable.

The commenters who disagreed with Commerce's changes to its equity regulation also challenged the amendment to the regulation regarding the allocation of an equity benefit over a minimum period of 12 years or the AUL established for the investigation or administrative review, whichever is longer. These commenters raised these same comments with respect to this identical amendment to the allocation period for debt forgiveness under § 351.508(c).

Those commenters stated that Commerce has allocated the benefit from non-recuring subsidies over the AUL of the relevant industry for decades and should not modify that allocation methodology for any reason. Acknowledging that Commerce provided the *DRAMs from Korea* investigation as an example of an unreasonable allocation period based on the AUL of the product (wherein the AUL was five years), the commenters stated that because the allocation period was based on real-world experience of that industry and a typical research and development (R&D) cycle and life span for equipment, Commerce was incorrect in concluding that the allocation period was in any way unreasonable.

Furthermore, those commenters characterized the 12-year allocation period for equity as arbitrary. They commented that any allocation applied by Commerce should relate to the subject merchandise at issue, instead of an arbitrary minimum of 12 years. As Commerce explained in the *Proposed Rule,*[184] according to the Congressional Research Service, the vast majority of U.S. CVD measures during that period were applied to four industries: (1) base metals; (2) products of chemical and allied industries; (3) resins, plastics, and rubber; and (4) machinery and electrical equipment.[185] Looking to the Modified Accelerated Cost Recovery Asset Life Table,[186] Commerce determined that those four industries fall under five asset classes, which, when averaged, results in a 12-year AUL of assets for the class. Put another way, the allocation period for non-recurring subsidies for the vast majority of Commerce's CVD measures since 1995 was 12 years. Accordingly, Commerce proposed a 12-year minimum allocation period to provide relief to the domestic industry from the harm caused by certain foreign government countervailable equity subsidies.

The commenters explained, however, that not all industries fall within those four industries, and for several industries, such as the industry at issue in *DRAMs from Korea,* the AUL of the product is less than 12 years. In making this claim, the commenters stated that Commerce's admitted reason for setting such an allocation minimum was to allow it to continue to countervail non-recurring subsidies for industries whose assets turn over relatively quickly. Therefore, they challenged a 12-year allocation period for those industries with shorter amortization rates, arguing that it would ''artificially extend'' the AUL to 12 years and, accordingly, distort the benefit calculation.

They also commented that Commerce's allocation minimum would unreasonably include a calculation of benefit associated with costs of capital, where Commerce builds into its allocation methodology a discount rate associated with the responding parties' costs of borrowing. In addition, the commenters expressed concerns that the application of the proposed revision would lead to an extended allocation period for non-recurring subsidy programs that would increase the retroactive period for each subsidy program. They suggested that by extending the allocation period, subsidy projects that no longer benefit the company during the investigation period could be captured erroneously in the CVD calculation. As a consequence, they commented that the calculated subsidy rate could end up in excess of the actual subsidy received by the company.

In the alternative, they suggested that if Commerce continues to insist on a 12-year allocation period for equity (and debt forgiveness), then it should establish that period as a rebuttable presumption and not a hard rule and permit parties an opportunity to demonstrate that the under-12, company-specific AUL is reasonable.

Commerce's Response:

All countervailable benefits must be determined based on the specific facts on the record and must be determined in accordance with the Act and Commerce's CVD regulations. No one is arguing otherwise. However, consistent with the Act and CVD regulations, the calculation of benefits conferred by countervailable subsidies are not subject to different rules based upon the merchandise being investigated. The benefit from a $10 million grant is $10 million, regardless of the recipient, the merchandise being produced by the grant recipient, or the AUL of the merchandise being produced. To be clear, at issue in this regulation is not the calculation of a subsidy benefit, despite some of the points made by the commenters, but instead the allocation of that benefit over a certain period of time.

With respect to the allegation that the allocation period of a subsidy benefit must be specific to the subject merchandise, the commenters cite no provision in the Act to support such a claim. In fact, for many types of subsidies, the benefit is allocated to the year of receipt which takes no measure of the type of merchandise that is subject to the investigation or administrative review. In truth, the Act is silent as to the allocation period for a subsidy; thus, Commerce's proposed changes to both § 351.507(d) and § 351.508(c) to include a 12-year minimal allocation period in the case of equity and debt forgiveness is fully consistent with Commerce's statutory authority to apply the CVD law in a reasonable and administrable manner.

Even our current allocation regulation at § 351.524(b) explicitly acknowledges that, for many subsidies, Commerce does not always allocate the benefit from non-recurring subsidies over the AUL of subject merchandise. Under § 351.524(b), Commerce will allocate or expense the benefit from a non-recurring subsidy only to the year of receipt if the subsidy benefit is less than 0.5 percent of relevant sales. Therefore, two companies in the same investigation, and thus producing the

[184] *See Proposed Rule,* 88 FR 29868–69.

[185] *Id.*

[186] *See* Internal Revenue Service Publication 946 (2021), Table B–2, the Modified Accelerated Cost Recovery Asset Life Table.

same subject merchandise, could have the identical subsidy benefit allocated over different periods.

With respect to the arguments that an allocation period of five years was reasonable in *DRAMs from Korea* and based upon a typical R&D cycle and life span for equipment, Commerce must first clarify that neither the allocation period nor the AUL tables used in our cases are based upon R&D cycles for the industry producing subject merchandise. Accordingly, that particular fact is irrelevant to the arguments challenging this regulatory change. The current regulations base the allocation period on the AUL of the assets.

In *DRAMs from Korea,* the government led a massive bailout of a financially-troubled firm by converting debt into equity and by forgiving debt to allow that firm to remain financially viable so it would not cease operations.[187] The forgiveness of debt and equity provisions were not specific to subject merchandise nor to the equipment that manufactured the subject merchandise.[188] Instead, the government-led bailout was a complete restructuring of the firm's capital formation to ensure the continuation of the firm's operations.[189] The forgiveness of debt and equity provisions undertaken at the direction of the government ensured the survival of Hynix and the company continued to operate for more than 20 years after the provision of these subsidies, a period much longer than five years. Thus, it is clear that the economic benefit, or the ''commercial impact'' of these subsidies, to use the argument of various commenters, is much longer than five years.

As the CIT stated in *BSC I,* fundamentally, the value of a subsidy must be measured in accordance with its benefit to the recipient, which is not necessarily limited to the period of time assets are actually used.[190] Similarly, in other cases like *Certain Steel Products from Austria,* respondents also stated that the governments' decisions to provide new equity funds was not related to the production of subject merchandise but to help save firms from insolvency.[191]

With respect to the general issue of allocation periods, it is important to note the history of this issue. There are no statutory, economic, or financial rules that mandate the choice of an allocation period, and theoretically one could argue that a subsidy benefits a firm forever, thereby rendering arbitrary any period short of the actual lifespan of the firm or facilities.

As noted above, the Act is silent with respect to the allocation of benefits, and what little legislative history there is on the subject deals with the shape of the benefit stream rather than its length. At most, the legislative history exhorts Commerce to use a ''reasonable'' method of allocation.[192] Commerce first explained its general policies on the allocation of subsidies focusing on the provision of grants provided for the purchase of capital equipment in the *1982 Subsidies Appendix.*[193] Commerce stated in that document that the legislative history of the Act required that where a grant was bestowed specifically to purchase capital equipment that the benefit flowing from the grant should be allocated in relation to the useful life of that equipment. Moreover, a subsidy for capital equipment should also be ''front-loaded'' in these circumstances. That is, it should be allocated more heavily to the earlier years of the equipment's useful life, reflecting its greater commercial impact and benefit in those years.[194]

The Senate Report to the legislative history of the Trade Agreements Act of 1979 explained that there was ''a special problem in determining the gross subsidy with respect to a product in the case of nonrecurring subsidy grants or loans, such as those which aid an enterprise in acquiring capital equipment or a plant. Reasonable methods of allocating the value of such subsidies over the production or exportation of the products benefiting from the subsidy must be used.'' [195] The House Report to the same Act also noted the ''special problem with regard to subsidies which provide an enterprise with capital equipment or a plant. In such cases, the net amount of the subsidy should be amortized over a reasonable period, following the beginning of full-scale commercial operation of the equipment or plant, and assessed in relation to the products produced with such equipment or plant during such period.'' [196] Thus, both the Senate and House Reports on the issue of the allocation of nonrecurring subsidies noted that the allocation should be over a ''reasonable time period.'' The House Report went slightly further with respect to grants that were provided for the purchase of capital equipment stating that the subsidy could be amortized based on the commercial operation of the capital equipment.[197]

For the 1982 steel investigations that were the subject of the *1982 Subsidies Appendix,* the allocation period of 15 years was based on Internal Revenue Service (IRS) data for integrated mills in the United States. Commerce used this IRS data because it sought a uniform period for allocation and one that reflected the estimated average life of steel assets worldwide.[198] Commerce stated that it could not calculate the average life of capital assets on a company-by-company basis since different accounting principles, extraordinary write-offs, and corporate reorganizations yielded extremely inconsistent results.[199] In determining whether a grant was to be allocated or expensed, Commerce determined to allocate grants that were large (*i.e.,* at least $50 million) and specifically provided for the purchase of capital equipment. Where the grant was small (*e.g.,* grants generally less than one percent of the company's gross revenues) and provided for items that are generally expensed in the year purchased such as wages or purchases of material, Commerce expensed the subsidy in the year the grant was received.[200]

Commerce next addressed the allocation period in the *1984 Subsidies Appendix.*[201] Commerce again stated that on the question of the allocation of subsidies, the legislative history revealed nothing more concrete than a directive that {Commerce} use ''reasonable methods.'' [202] Commerce stated that funds provided under government direction or directly by the government provide a subsidy to the extent that the recipient pays less for the funds than it would on the market. In

[187] *See DRAMS from Korea* IDM at Comment 7.

[188] *Id.* at 12.

[189] *Id.*

[190] *See BSC I,* 605 F. Supp. at 295–96.

[191] *See Certain Steel Products from Austria,* 58 FR 37249.

[192] *See* Senate Report on Trade Agreements Act of 1979, No. 249, 96th Cong., 1st Sess. (July 17, 1979), at 85–86.

[193] *See Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Belgium,* 47 FR 39304, 39317 (September 7, 1982), at Appendix 2—Methodology (containing the *1982 Subsidies Appendix*).

[194] *Id.,* 47 FR 39316.

[195] *See* S. Rep. No. 249, 96th Cong., 1st Sess. at 85.

[196] *See* House Report on Trade Agreements Act of 1979, No. 96–317, 96th Cong., 1st Session. (July 3, 1979), at 74–75.

[197] *Id.*

[198] *See 1982 Subsidies Appendix,* 47 FR 39317.

[199] *Id.*

[200] *Id.*

[201] *See Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 49 FR 18006, 18016 (April 26, 1984), at the Subsidies Appendix (*1984 Subsidies Appendix*).

[202] *Id.*

the case of a loan, this is the difference between the cash flows (*i.e.,* the company's receipts and payments) on the loan under examination and the cash flows for a comparable commercial loan taken out by the same company.[203] For equity, it is the difference between what the government paid for a share of the company and what the market would have paid for the share.[204] For grants, the saving to the recipient is the face value of the grant—that is, the difference between what the company paid for the funds (*i.e.,* zero), and what it would have to pay on the market to receive the funds (*i.e.,* the face value of the grant).[205]

Differences in cash flows can arise in a single moment, as with grants (*i.e.,* complete receipt of the funds at once), or over several years, as with long-term loans (*i.e.,* through periodic repayment).[206] The point at which the difference in cash flows occurs does not always coincide with the economic benefit of the subsidy, and therefore, does not necessarily provide an appropriate schedule for assessing CVDs. The economic benefit is diffused around the time that the cash flow differential occurs. For example, it would be inappropriate to allocate a $1 billion grant received on March 17, 1984, entirely to March 17, 1984. The grant continues to benefit the company after that date, and thus, Commerce would not counteract the economic benefit of the grant by assessing CVDs to products exported on only that single day. Therefore, to counteract the benefit of such actions, Commerce had to determine an appropriate period over which to allocate benefits and decide how much of the benefit to allocate to each year.

Commerce first attempted to codify different allocation periods for subsidies in the *1989 Proposed CVD Rules.*[207] Commerce stated in the preamble to the *1989 Proposed CVD Rules* that it would consider the use of a set 10-year allocation period for all non-recurring benefits before issuing its final rules; however, it never issued those final rules. In the decades since the *1989 Proposed CVD Rules,* Congress has not addressed the allocation period for subsidies in the Act, deferring the issue to Commerce's expertise. Accordingly, through its practice, Commerce has developed allocation rules to ensure that a reasonable method of allocation will provide adequate relief to the domestic parties with respect to offsetting the injurious effect of unfair foreign government subsidies and to ensure consistency and predictability in the allocation period. Towards that end, Commerce has implemented through the formal rule-making process allocation rules that differentiate between different forms of financial contributions and for different types of subsidy benefits. We have different allocation rules for non-recurring subsidies and recurring subsidies.[208] We even have allocation rules that differentiate whether a non-recurring subsidy will be allocated over an AUL or only allocated (*i.e.,* expensed) in the year of receipt.[209] Moreover, recurring subsidies are allocated (*i.e.,* expensed) in the year of receipt regardless of the merchandise that is under investigation.[210]

Different types of subsidy programs also have different allocation periods wholly unrelated to the recipients' production operations. There are specialized allocation rules for loans.[211] There are different allocation periods for income tax programs [212] and different allocation periods for the provision of goods and services.[213] None of the allocation periods for these common subsidy programs are related to the production of subject merchandise or related to the AUL of the recipients' capital assets.

For grant programs, there are different allocation periods based on the purpose of the grants. For example, grants provided for R&D, export promotion, or training are allocated to the year of receipt,[214] while grants for capital equipment are allocated over time based on the AUL, except in instances where the grant benefit for capital equipment is less than 0.5 percent of the recipient's relevant sales.[215] Thus, if each of the respondents in an investigation receive a $30 million grant to purchase equipment used to manufacture subject merchandise, the grant received by one respondent could be allocated to the year of receipt due to the size of its sales revenue while, for the other respondent, that identical grant is allocated over time.

For example, if a respondent received a $30 million tax credit based on a firm's purchase of equipment used to manufacture subject merchandise, it would be allocated (fully expensed) in the year that it uses the tax credit to reduce its income tax liability. On the other hand, another respondent, instead of receiving a $30 million tax credit, might have instead received a $30 million grant to purchase equipment used to manufacture subject merchandise. Under that hypothetical, instead of the benefit being fully allocated to one year, the benefit would instead be allocated over time. Similarly, Commerce could calculate a $30 million countervailable benefit from the provision of capital equipment for less than adequate remuneration to a firm and under the allocation rules established by the CVD regulations, the benefit would be allocated (*i.e.,* expensed) in the year in which the firm paid for the capital equipment.

In sum, Commerce has adopted and codified different allocation rules for different types of subsidies over the past 40 years, consistent with the Act and the legislative history of this issue. Throughout that period, for purposes of the CVD law, Commerce has concluded that the purpose of an allocation period is to provide adequate relief to domestic parties with respect to offsetting the injurious effect of unfair foreign government subsidies. Further, Commerce has also determined that an allocation period for a subsidy should ensure consistency and predictability across CVD proceedings.[216] This understanding of the purposes of an allocation period has consistently been Commerce's starting point in determining an appropriate allocation period for a subsidy.

Accordingly, we believe that the allocation periods set forth within §§ 351.507(d) and 351.508(c)(1) to account for the unique nature of equity and debt forgiveness subsidies are not only consistent with those purposes, but also consistent with Commerce's statutory and regulatory obligations.

In addition to the challenge to the 12-year minimal allocation period in general, one commenter expressed concerns that by extending the AUL to 12 years for industries with shorter amortization rates, Commerce's allocation methodology would introduce a distortive calculation of benefit associated with costs of capital. This commenter stated that this would occur where Commerce builds into its allocation methodology a discount rate associated with the responding parties' costs of borrowing. As a preliminary matter, Commerce agrees that it calculates the discount rate based on a respondent's cost of borrowing.

[203] *Id.*

[204] *Id.*

[205] *Id.*

[206] *Id.*

[207] *See 1989 Proposed Rules,* 54 FR 23376–77.

[208] *Id.*

[209] *Id.,* 54 FR 23383–84.

[210] *Id.*

[211] *Id.,* 54 FR 23376–77.

[212] *Id.,* 54 FR 23374–75.

[213] *Id.,* 54 FR 23375–76.

[214] *Id.,* 54 FR 23384.

[215] *Id.,* 54 FR 23385.

[216] *Id.,* 54 FR 23376–77.

However, that calculated discount rate is unrelated to the allocation period and would not change based on the allocation period. Thus, we disagree that it would create any distortions as stated by the commenter. Under § 351.524(d)(3), the discount rate is based upon a company's costs of long-term, fixed rate loans for the year in which the government agreed to provide the subsidy. For example, if the government agreed to provide a subsidy to a respondent in 2020, Commerce would calculate the discount rate based on the respondent's costs of borrowing in 2020. That calculation would not change if the allocation period was three, eight, or 12 years. In fact, two companies with the identical AUL can have different costs of borrowing, and thus can have different calculated discount rates. Therefore, we disagree that the modified regulation would introduce any distortions into calculations of benefit associated with costs of capital.

Lastly, in response to the commenter that requested that Commerce should, at minimum, make the 12-year minimum allocation period a rebuttable presumption, we do not agree that such an option would be a reasonable change to the regulation. Adopting this suggestion would undermine our reasons, described above, for providing a predictable minimum 12-year allocation period for equity and debt forgiveness subsidies. Moreover, the proposal is also inconsistent with the treatment of the allocation periods for other types of subsidy programs within our regulations such as loans, loan guarantees, income tax programs, the provision of goods and services, and recurring grants, in which the allocation period of the subsidy benefit is not established as a rebuttal presumption.

11. Commerce has made no further changes to the proposed amendment to the CVD debt forgiveness regulation, § 351.508.

For the debt forgiveness regulation, we are modifying § 351.508(c), which currently allocates the benefit of debt forgiveness over the same period of time as a non-recurring subsidy under § 351.524(d). The modification to paragraph (c) would measure the allocation by that period, or over a period of 12 years, whichever is longer.

The current standard tied to the AUL of assets works well for the vast majority of the cases in which Commerce finds a countervailable debt forgiveness benefit, as the provision of debt forgiveness is normally part of a government-led restructuring package for a state-owned steel company. However, there are cases, as discussed in the *Proposed Rule* and in the equity section above, where this regulatory standard leads to a result that appears to be inconsistent with the purpose of the CVD law to provide relief to the domestic industry from unfair and distortive foreign government subsidies.

Therefore, we are modifying § 351.508(c) of our CVD regulations to state that Commerce will treat the benefit from debt forgiveness as a non-recurring subsidy and will allocate the benefit to a particular period in accordance with § 351.524(d), or over 12 years, whichever is longer. We explained both in the *Proposed Rule* and further above in the equity section why we selected the allocation period of 12 years.[217]

We received comments from 11 parties with respect to this amendment to our debt forgiveness regulation, with six of the parties supporting the revisions to this regulation. The parties that expressed opposition to this revision expressed the same concerns with respect to the identical revision to the equity regulation. Accordingly, for further analysis on these comments, and the reasoning behind our decision to continue to amend the 12-year minimum allocation period in § 351.508(c), see the equity section above.

12. Commerce has made no further changes to the proposed amendments to the CVD regulations covering direct taxes, § 351.509.

For purposes of the CVD regulation addressing direct taxes, we are adding a new paragraph (d) to § 351.509, which states that benefits from income tax-related subsidies are not tied to particular products or markets. In the *CVD Preamble,* Commerce stated that it considers certain subsidies such as payments for plant closures, equity infusions, debt forgiveness, and debt-to-equity conversions as not tied to certain products or markets because they benefit all production.[218] Commerce also stated in the *CVD Preamble* that we recognized that there may be scenarios where the attribution rules that are set forth under § 351.525 do not precisely fit the facts of a particular case, and that we are ''extremely sensitive to potential circumvention of the countervailing duty law.'' [219] Moreover, Commerce concluded that if subsidies allegedly tied to a particular product are in fact provided to the overall operations of a company, Commerce will attribute the subsidy over sales of all products by the company.[220] In addition, in the years following the issuance of the current CVD regulations, Commerce determined with respect to a tying claim of tax credits that tax credits reduce a firm's overall tax liability which benefits all of the firm's domestic production and sales.[221]

Therefore, based on the language in the *CVD Preamble* and our experience since the issuance of the current CVD regulations, we have added a provision to the CVD regulations that states, ''If a program provides for a full or partial exemption, reduction, credit, or remission of an income tax, the Secretary normally will consider any benefit to be not tied with respect to a particular market under § 351.525(b)(4) or to a particular product under § 351.525(b)(5).'' In accordance with this provision, if subsidies in fact benefit the overall operations of a firm, even if they are allegedly tied to a particular product or market, we will attribute the subsidy to all sales of all the firm's products.

We received comments from five parties that supported this amended provision and another commenter who generally concurred with the amendment but stated that Commerce should retain discretion with respect to the allocation of the benefit if they grant the direct tax program based on a specific market or product. In addition, two commenters stated that Commerce should not implement this proposal. One of these commenters stated that it is Commerce's long-standing practice to evaluate the purpose of the subsidy in determining whether the subsidy is tied, and that Commerce does not trace how the subsidy is used. In addition, according to that commenter, Commerce has not offered a reason for its proposed departure from its long-established attribution rules. The other commenter stated that the proposed change under § 351.509(d) provides Commerce with greater discretion in deciding when a tax is tied to a particular market or product and it is not clear how Commerce will exercise that discretion, nor does the preamble indicate why Commerce needs such discretion. That commenter also expressed concerns that this amendment would contradict section 701(a)(1) of the Act, which states that Commerce must establish that the government or a public entity is providing, directly or indirectly, a countervailable subsidy with respect to

[217] *See Proposed Rule,* 88 FR 29868–69.

[218] *See CVD Preamble,* 63 FR 65400.

[219] *Id.*

[220] *Id.*

[221] *See Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination,* 77 FR 75975 (December 26, 2012) (*Washers from Korea*), and accompanying IDM.

the manufacture, production, or export of merchandise under investigation.

Commerce's Response:

As a preliminary matter, we agree with the commenter that stated that Commerce has a long-standing practice when analyzing whether a subsidy benefit is tied to a particular product or particular market. It was in the *1982 Subsidies Appendix* that Commerce published the criteria for determining whether a subsidy is tied, and that standard is the one that is still used and reflected in the *CVD Preamble.* Under this standard, a subsidy benefit is ''tied'' when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy. This is the standard that Commerce will continue to use with respect to whether a subsidy benefit is tied to a particular product or market.

However, in the *CVD Preamble,* Commerce explicitly recognized that there may be scenarios where the attribution rules that are set forth under § 351.525 do not precisely fit the facts of a particular case and emphasized that it was ''extremely sensitive to potential circumvention of the countervailing duty law.'' [222] Moreover, Commerce concluded that if subsidies allegedly tied to a particular product are in fact provided to the overall operations of a company, Commerce will attribute the subsidy over sales of all products by the company. Direct tax programs reduce or eliminate income taxes paid by a firm, which by their very nature benefit the overall operations of the recipient firm.

We disagree with respect to the comment that this amendment contradicts section 701(a)(1) of the Act. Section 701(a)(1) of the Act does not establish an attribution methodology to be used for any type of countervailable program, much less for a program that provides for a full or partial exemption, reduction, credit, or remission of an income tax. This section of the Act requires Commerce to investigate and quantify countervailable subsidies provided directly or indirectly to the manufacture, production, or exportation of subject merchandise, which we are doing under the new language at § 351.509(d). Section 351.509(d) is fully consistent with the requirements in section 701(a)(1) of the Act and no commenter provided further reasoning to suggest otherwise.

We also disagree with the commenter that stated that Commerce has not offered a reason for its proposed departure from its long-established attribution rules. In the *Proposed Rule,* Commerce sought public comment and explicitly stated why we were making this amendment with respect to the attribution of direct taxes, citing language in the *CVD Preamble* that explained that the attribution rules under § 351.525 may not precisely fit the facts of a particular case.[223] Moreover, Commerce explained in the *Proposed Rule* that the *CVD Preamble* explicitly concluded that if subsidies allegedly tied to a particular product are in fact provided to the overall operations of a company, Commerce will attribute the subsidy over sales of all products by the company, and that direct tax benefits addressed under § 351.509 meet the ''tying'' exception criterion established in the *CVD Preamble.*[224] These types of direct tax programs reduce or eliminate income taxes paid by a firm. Income taxes are based on a firm's total taxable income which is comprised of the overall tax liability generated from all the firm's production and sales. Thus, these types of direct tax programs benefit the overall domestic production of the firm. No commenter provided any type of support or reasoning that would contradict our conclusion that a program that provides for a full or partial exemption, reduction, credit, or remission of an income tax reduces the overall tax liability of a firm which is generated from all the firm's production and sales.

Commerce also disagrees with the commenter who stated, with no cited support, that this amendment amounts to tracing how a subsidy is used. In the *CVD Preamble,* Commerce stated the concept of fungibility related to the issue of whether Commerce could, or should, trace the use of specific funds to determine whether such funds were used for their stated purpose.[225] Neither the fungibility of money nor the tracing of the use of a subsidy is relevant to this amendment to our regulations. Under the provisions of § 351.509(d), Commerce is in no way suggesting that it will trace the use of a subsidy through a company's books and records to determine whether subsidy funds were used appropriately (*i.e.,* for their intended use). Indeed, there is no proposal that Commerce will go through a firm's books and records to ascertain which sales, costs, funds, and expenses contributed to the firms total taxable income in order to calculate or attribute the benefit conferred from a program that provides for a full or partial exemption, reduction, credit, or remission of an income tax. Instead, the revised language merely explains that if a program provides for a full or partial exemption, reduction, credit, or remission of an income tax, Commerce normally will consider any benefit to be not tied with respect to a particular market or product.

We also did not implement the suggestion that Commerce should retain discretion with respect to the allocation of the benefit if the granting of the direct tax program was based on a specific market or product. Acceptance of this suggestion would directly contradict the reasons for implementing § 351.509(d). Income taxes are based on a firm's total taxable income which is comprised of the overall tax liability generated from all the firm's production and sales. Thus, these types of direct tax programs benefit the overall production of a firm. This fundamental element of a program that provides for a full or partial exemption, reduction, credit, or remission of an income tax does not change whether the granting of the income tax exemption, reduction, remission, or credit is based on a specific market or product.

Lastly, one commenter suggested that the change to § 351.509(d) provides Commerce with greater discretion in deciding when a tax is tied to a particular market or product, and it commented that it was not clear how Commerce would exercise such discretion. We believe that this party has misread or misinterpreted the language within § 351.509(d). The language within § 351.509(d) does not provide Commerce with greater discretion to decide when a direct tax is tied to a particular market or product. In fact, one could argue that it limits Commerce's discretion in some ways. Specifically, § 351.509(d) states that Commerce normally will not find a program that provides for a full or partial exemption, reduction, credit, or remission of an income tax to be tied to a particular market or product. Nonetheless, as explained in the *Proposed Rule* and *CVD Preamble,* Commerce currently has the discretion to determine if subsidies allegedly tied to a particular product are in fact provided to the overall operations of a company, and if it makes such a determination, the agency may determine to attribute the subsidy to sales of all products by the company. The revision to § 351.509(d) neither increases nor takes away that discretion from the agency.

13. Commerce has made no further modifications to its proposed changes to the CVD regulation covering export insurance—§ 351.520(a)(1).

[222] *See CVD Preamble,* 63 FR 65400.

[223] *See Proposed Rule,* 88 FR 29869.

[224] *Id.*

[225] *See CVD Preamble,* 63 FR 65403.

With respect to export insurance, Commerce is modifying § 351.520(a)(1) to include a period of time (normally five years) over which Commerce may examine whether premium rates charged were inadequate to cover the long-term operating costs and losses of the program. If Commerce determines that those rates were inadequate to cover such costs and losses during that period of time, then it may determine that a benefit exists.

As Commerce explained in the *CVD Preamble,*[226] this standard of benefit for export insurance is based on paragraph (j) of the Illustrative List.[227] In the *CVD Preamble,* Commerce stated that in determining whether the premiums charged under an export insurance program covered the long-term operating costs and losses of the program, we anticipated that we would continue to make that determination based on the five-year rule.[228] Since 1998, when the current CVD regulations were published, we have consistently applied a period of five years to analyze whether the premiums charged under an export insurance program are adequate to cover the long-term operating costs and losses of the program.[229] Therefore, we are amending § 351.520(a) to include the five-year period considered in Commerce's standard export insurance benefit analysis. Accordingly, any allegation made with respect to an export insurance program should be based on a five-year period to satisfy Commerce's standard benefit analysis for this program. All the comments received with respect to § 351.520(a) supported this change.

14. Commerce has made no further amendments to its regulation covering the calculation for ad valorem subsidy rates and attribution of subsidies to a product, § 351.525.

Commerce is making a minor change to the language within paragraphs (b)(2) and (3) of § 351.525, which concern the attribution of an export subsidy and a domestic subsidy. Currently under existing § 351.525(b)(2), when Commerce determines that a subsidy is specific within the meaning of sections 771(5A)(A) and (B) of the Act, because the subsidy is in law or fact contingent on export performance, alone or as one of two or more conditions, Commerce will attribute that export subsidy only to products exported by the firm. Similarly, when Commerce determines that a subsidy program is specific as a domestic subsidy as defined within the meaning of section 771(5A)(D) of the Act, then under existing § 351.525(b)(3), Commerce will attribute that domestic subsidy to all products sold by the firm, including products that are exported.

As currently written, both § 351.525(b)(2) and (3) use the language ''the Secretary will,'' without condition. Under this amendment, the language used in both paragraphs (b)(2) and (3) of § 351.525 will be changed to ''the Secretary will normally.'' The change to this section of the regulation will not change our established practice of allocating an export subsidy only to products exported by the firm and allocating domestic subsidies to all products sold by the firm, including exports. The insertion of the word ''normally'' into both paragraphs (b)(2) and (3) would merely ensure that there is no perceived conflict with the language in paragraphs (b)(2) and (3) and the language in § 351.525(b)(7) that allows Commerce to attribute a subsidy to multinational production under extremely limited circumstances. In addition, the proposed insertion of the word ''normally'' into both paragraphs (b)(2) and (3) of § 351.525 indicates a limited provision of Commerce's discretion.

One point which was not made in the *Proposed Rule,* which we emphasize in this final rule with respect to this regulation, involves export subsidies. An export subsidy is defined under section 771(5A)(B) of the Act as a subsidy that is, in law or fact, contingent upon export performance, alone or as one of two or more conditions. If Commerce determines that a subsidy is an export subsidy because it is contingent upon export performance as one of two or more conditions, the fact that other conditions are not contingent upon export performances is not itself sufficient to depart from the standard attribution and allocation methodology that an export is solely attributed and allocated to products that are exported by the firm.

Commerce received several comments on this regulation that supported this change to § 351.525(b)(2) and (3). However, there were some submissions in which commenters expressed opposition to this amendment. Most of these commenters explained that the amendment should not be adopted because it would create ''excessive unpredictability'' and ''standardless uncertainty'' through agency discretion into the calculation of a subsidy rate. Those commenters expressed concerns that by introducing the word ''normally'' into the attribution rules for export subsidies and domestic subsidies, which are clear and well-established, without any boundary to that discretionary language, Commerce was creating uncertainty where none needs to exist.

In addition, one commenter expressed concerns that the addition of the term ''normally'' to this regulation would contradict section 701(a)(1) of the Act, which states that Commerce must establish that the government or a public entity is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of merchandise under investigation.

Commerce's Response:

We disagree that the insertion of the word ''normally'' into paragraphs (b)(2) and (3) of § 351.525 will create unpredictability and uncertainty in the attribution of export and domestic subsidies. While Commerce does not disagree that the term ''normally'' provides a small degree of flexibility or discretion, such flexibility or discretion is narrow. ''Normally'' means usually or regularly[230]—in other words, the standard practice. If Commerce were to attribute export subsidies not to products exported by a firm, or to attribute domestic subsidies not to products sold by a firm, Commerce would have to provide a reason on the record for not following its normal practice. Commerce does not see how this would make the agency's practice ''unpredictable'' or ''standardless.'' Indeed, the term ''normally'' indicates the very existence of a standard.

In fact, the use of the term ''normally'' and its equivalent, ''in general,'' have appeared in most of Commerce's CVD regulations for at least 25 years, and even § 351.525(b) itself starts with the words ''in general.'' Throughout that time period, Commerce has

[226] *Id.,* 63 FR 65385.

[227] *See* Illustrative List of Export Subsidies, annexed to the 1994 WTO Agreement on Subsidies and Countervailing Measures as Annex I (Illustrative List); *see also* SAA at 928 (''Unlike existing section 771(5)(A)(i), new section 771(5) does not incorporate the Illustrative List of Export Subsidies into the statute. The Illustrative List, an annex to the Tokyo Round Code, continues in modified form as Annex I to the Subsidies Agreement. However, the Illustrative List has no direct application to the CVD portion of the Subsidies Agreement. . . . It is the Administration's intent that Commerce adhere to the Illustrative List except where the List is inconsistent with the principles set forth in the implementing bill'').

[228] *See CVD Preamble,* 63 FR 65385.

[229] *See, e.g., Washers from Korea,* 77 FR 75975; and *Bottom Mount Combination Refrigerators-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination,* 77 FR 17410 (March 26, 2012), and accompanying IDM at Comment 2.

[230] *See Collins Dictionary,* ''Normally,'' retrieved November 9, 2023, *https://www.collinsdictionary.com/us/dictionary/english/normally.*

administered its CVD regulations and has never had problems with ''excessive unpredictability'' and ''standardless uncertainty,'' as suggested by some of the commenters. Accordingly, we disagree that adding the term ''normally'' to § 351.525(b)(2) and (3) will create any of the confusion suggested by certain commenters.

Lastly, in response to the commenter that expressed concerns that this change would contradict section 701(a)(1) of the Act, we disagree. Section 701(a)(1) of the Act does not set forth an attribution methodology to be used with respect to either a domestic subsidy or an export subsidy. This section of the Act requires that Commerce investigate and quantify countervailable subsidies provided directly or indirectly to the manufacture, production, or exportation of subject merchandise. The addition of the term ''normally'' to § 351.525(b)(2) and (3) in no way undermines or contradicts that analysis. Therefore, this modification to the regulation does not in any way contradict section 701(a)(1) of the Act.

15. Commerce has determined to withdraw its transnational subsidy regulation, § 351.527.

After considering the comments received on our proposal to withdraw this section, Commerce has determined to repeal the current transnational subsidies regulation. In repealing this regulation, we clarify that when appropriate, Commerce will investigate and countervail transnational subsidies (*i.e.,* subsidies provided by a government or public entity in one country that benefit producers or exporters in another country).

Section 701 of the Act does not impose geographic limitations on countervailing unfair foreign subsidies. As was explained in the *CVD Preamble,* § 351.527 was derived from now-repealed section 303(a)(1) of the Act.[231] When § 351.527 was promulgated, Commerce's administrative experience at that time was that normally governments were subsidizing manufacturing and production activities in their own countries rather than subsidizing manufacturing and production abroad. Consistent with the experience at that time, upon promulgating § 351.527, in 1998, Commerce repeated this perspective and, accordingly, stated, ''{i}n our view, neither the successorship of section 701 for Subsidies Code members nor the repeal of section 303 by the {Uruguay Round Agreements Act (URAA)}, eliminated the transnational subsidies rule, and there is no other indication that Congress intended to eliminate this rule.'' [232]

Since that time, the assumptions underlying Commerce's interpretation of section 701 of the Act have changed. In the intervening two decades, Commerce has observed increasing instances in which a government subsidizes foreign production. As a result, we now believe that our past regulatory interpretation of section 701 of the Act was overly restrictive and not required by statute. Commerce's self-imposed restriction on its ability to countervail subsidies only if those subsidies were provided to entities of a country solely by the government of that country, when subsidies from other foreign governments would otherwise be determined countervailable under the CVD law and injurious to producers of the domestic like product, is inconsistent with the very purpose of the CVD law. Section 701 of the Act does not require such a restrictive interpretation.

We received numerous comments expressing strong support for eliminating the current transnational subsidies regulation. These commenters argue that Commerce has the statutory authority to investigate and countervail transnational subsidies. Whereas the now-repealed section 303(a)(1) of the Act previously focused on the administering authority's analysis of subsidization on ''article{s} or merchandise manufactured or produced in {the} country {of bestowal},'' this limiting language was repealed by section 261(a) of the URAA, as well as the entirety of section 303 of the Act.[233] In place of the now-repealed section 303 of the Act, section 701 of the Act introduced a new subsidy definition, in which there is no limitation on Commerce's authority to investigate the ''subject country'' or otherwise circumscribe the ''country'' from which the subsidy emanates.[234]

Numerous commenters provided specific examples of the increasing prevalence in which a government provided a subsidy that benefits foreign production. Several commenters cited the People's Republic of China's (China) ''Belt and Roade Initiative'' (BRI) as a primary example. One such commentator explained that subsidies associated with China's BRI program have propped up third country export platforms for a variety of industries. Another commentator explained that programs like China's BRI have driven a rapid expansion of Chinese industrial capacity in third countries with significant government support, which both displaces sustainable, market-based investment and perpetuates global distortion. Significantly, industrial capacity projects under the BRI often proceed with support from investment funds that have the trappings of international lending or development institutions but that are ultimately vehicles for Chinese industrial policy initiatives. In certain industries, including the steel industry, BRI-linked subsidies have transplanted excess capacity into third countries, resulting in a proliferation of non-market production that has avoided AD/CVD orders on unfairly traded imports directly from China.

Commerce's Response:

We agree with these comments. Section 701 of the Act does not impose geographic limitations on countervailing unfair foreign subsidies. Section 351.527 was promulgated over 25 years ago in a global trade environment much different than the current trade environment. Specifically, the subsidization landscape of 25 years ago related primarily to transnational transactions involving foreign aid.[235] In contrast, in today's subsidization landscape, governments provide cross-border equity infusions, fundings, loans, *etc.,* and they are no longer limited to foreign aid. Rather, they are provided to

[231] *See CVD Preamble,* 63 FR 65405. Section 303 (19 U.S.C. 1303) was repealed in 1994, effective January 1, 1995, pursuant to the URAA.

[232] *See Proposed Rule,* 88 FR 29870 (citing *1997 Proposed CVD Rules,* 62 FR 8847, referencing the subsidy attribution regulation covering multinational firms).

[233] *See* SAA at 923. The SAA accompanying the URAA explains the change, in relevant part, as follows: ''under existing law, section 303 applies in the case of a country which is not a 'country under the Agreement' and contains its own definition of subsidy. In light of the new subsidy definition contained in the Subsidies Agreement, it is unnecessary and confusing to retain section 303.''

[234] *See Aerolineas Argentinas* v. *United States,* 77 F.3d 1564, 1575 (Fed. Cir. 1996). The Federal Circuit has pronounced a clear rule: ''When a statute has been repealed, the regulations based on that statute automatically lose their vitality. Regulations do not maintain an independent life, defeating the statutory change.''

[235] *See, e.g., Final Affirmative Countervailing Duty Determination; Fuel Ethanol from Brazil,* 51 FR 3361 (January 27, 1986), and accompanying IDM (determining funds that were provided by the World Bank with the Government of Brazil (GOB) required to match the World Bank's fund commitment. While Commerce countervailed the portion attributed to GOB funds, it found that the portion of funds provided by the World Bank not countervailable); *Final Affirmative Countervailing Duty Determinations; Certain Steel Products from the Republic of Korea,* 47 FR 57535 (December 27, 1982), and accompanying IDM (determining funding for helping war reparations are the result of unique circumstances and reflect political and economic considerations that are outside of the realm of activities which are contemplated by the CVD law. Thus, Commerce could not envision an instance in which benefits flowing from payments of war reparations confer subsidies within the meaning of the Act).

promote the grantor country as well as the recipient's country manufacturing capacities for a particular industry.[236] We also have observed direct investments in a third country from state-owned enterprises, with backings from state-owned policy banks, promoting the specific grantor country's industry policies.[237]

Some commenters argue that, regardless of whether Commerce removes § 351.527, the statute prohibits Commerce from countervailing transnational subsidies. One commenter points out that the statute only gives Commerce the authority to impose a countervailing duty on merchandise from a single country. Therefore, they argue that the statute clearly establishes that Commerce's investigations, and subsequent imposition of countervailing duties as a result of its investigations, are limited to a single country (*i.e.,* ''a'' country).

We are unpersuaded by this argument. As some commenters acknowledged, the text of section 701 of the Act does not prohibit Commerce from finding that a transnational subsidy is countervailable and further, section 701 of the Act allows Commerce to countervail a subsidy from multiple countries if those countries are part of an international consortia.

Another commenter relied on repealed section 303(a)(1) of the Act and the 1993 General Issues Appendix,[238] which provided guidance on pre-URAA determinations, arguing that Congress intended section 701(a) of the Act to have to the same meaning and application as the language in repealed section 303(a)(1) of the Act. We find this comment also to be unpersuasive. As explained above, the language in section 303 of the Act was repealed in its entirety, and the language that existed in section 303(a)(1) was revised and is different from that found in the language codified, pursuant to the URAA, in section 701(a) of the Act.

Some commenters noted practical constraints with respect to transnational subsidy allegations, particularly the risk of imposing unreasonable evidentiary obligations on the government of the exporting countries and, exporting enterprises, as well as the government or other entities of third countries. We acknowledge these concerns, but believe that it is premature to speculate as to Commerce's future evidentiary standards for allegations or findings on various potential transnational subsidies. The existence of a transnational subsidy would be a case-specific one, and Commerce will not speculate on what evidence is needed to allege or prove the existence of a countervailable transnational subsidy without analyzing in the first instance the record evidence presented in a particular proceeding.

As the administering authority for countervailing duty proceedings, it is Commerce's charge to enforce U.S. CVD law, such that U.S. industries are receiving the fullest extent of the remedy provided by the statute. As the dynamics of global trade continue to evolve and foreign governments implement novel approaches to subsidization, the removal of § 351.527 strengthens Commerce's ability to accomplish its statutory mission to assess and remedy unfair foreign trade practices that harm U.S. workers, farmers, and companies.

16. Commerce has made no further modifications to its new CVD regulation covering fees, fines, and penalties—§ 351.529.

Commerce explained in the *Proposed Rule* that when a government fails to enforce its regulations, requirements, or obligations by not collecting a fee, a fine, or a penalty, such inaction can be considered a countervailable subsidy.[239] In that case, the government has forgone revenue it was otherwise due, therefore, benefiting the party not paying the fee, fine, or penalty, pursuant to section 771(5)(D)(ii) of the Act. There are various examples of a government providing benefits to parties through inaction. For example, a firm might have owed certain fees to the government for management of waste disposal, certain fines for violations of occupational safety and health standards in its facility, or certain penalties for non-compliance with other labor laws and regulations that were never paid. A government may also have failed to take any action to collect fees, fines, or penalties that were otherwise due in the first place. In both scenarios, it is Commerce's long-standing practice to treat unpaid and deferred fees, fines, and penalties as a countervailable subsidy, no matter if the government took efforts to seek payment, recognized that no payment had been made, or indicated to the company that it was permitting a payment to be deferred. Section 351.529 of the *Proposed Rule* codified that practice.

Paragraph (a) under § 351.529 explains that a financial contribution exists if Commerce determines that a fee, fine, or penalty which is otherwise due has been forgone or not collected within the meaning of section 771(5)(D)(ii) of the Act, with or without evidence on the record that the government took efforts to seek payment or acknowledged nonpayment or deferral.

Paragraph (b) explains that if the government has exempted or remitted a fee, fine, or penalty, in part or in full, and Commerce determines that it is revenue which has been forgone or not collected in paragraph (a), then a benefit exists to the extent that the fee, fine, or penalty paid by the party is less than if the government had not exempted or remitted that fee, fine, or penalty. Likewise, also under proposed paragraph (b), if Commerce determines that payment of the fee, fine, or penalty was deferred, it will determine that a benefit exists to the extent that appropriate interest charges were not collected, and the deferral will normally be treated as a government loan in the amount of the payments deferred, according to the methodology described in § 351.505. The language for determining the benefit for nonpayment or deferral is similar to other revenue forgone benefit regulations, such as § 351.509, covering direct taxes, and § 351.510, covering indirect taxes and import charges (other than export programs).

Commerce received several comments on this proposed regulation. We have determined to make no modification to the proposed regulation in response to those comments for the reasons provided below.

Several commenters approved of Commerce's codification of its practice in this regard. One commenter expressed its support for the fact that Commerce may find the existence of a countervailable subsidy even if the government has not taken efforts to seek payment or grant deferral, or otherwise acknowledged nonpayment of the fee, fine, or penalty. Under their view, an unpaid obligation is an unpaid obligation, regardless of the actions taken by the government. That commenter suggested that Commerce might also include in the regulation that it could rely on evidence from third parties, such as reports by international or non-governmental organizations to establish the existence of an unpaid fee, fine, or penalty.

Other commenters supporting the regulation expressed concerns that the

[236] *See, e.g., Economic Statecraft in China's New Overseas Special Economic Zones,* International Food Policy Research Institute (March 2012), found at *https://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/126834/filename/127045.pdf.*

[237] *Id.*

[238] *See Certain Steel Products from Austria,* 58 FR 37217, at Comment 2 of the General Issues Appendix.

[239] *See Proposed Rule,* 88 FR 29858.

regulation, as drafted, could be interpreted too narrowly to only apply when the nonpayment of a fee, fine, or penalty is unique to a particular party, and not when a law or other government measure generally imposes an exception to the payment of a fee, fine, or penalty for certain industries, enterprises, or other groups. The commenters expressed concerns that respondents or foreign governments could argue that payment of a fee, fine, or penalty would not be ''otherwise due'' or ''otherwise required'' under that scenario. They therefore requested that Commerce clarify in the final rule that it will consider a financial contribution to have been conferred under this provision even when non-payment of fees, fines, or penalties by certain entities is provided for by law.

Additional commenters supporting the provision expressed concerns that the regulation was too narrow in addressing government inaction, and that it should also apply to the other examples Commerce described in the preamble to the *Proposed Rule*—specifically, weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, and environmental protections. Those commenters suggested that Commerce should determine that the government inaction in those situations is a financial contribution that provides a benefit specific to those industries and enterprises benefiting from lower costs and, therefore, Commerce should countervail that government inaction in practice and in its regulations.

Other commenters focused on the ''otherwise due'' language. One sought further clarification as to when the benefit of an unpaid fee, fine, or penalty is ''otherwise due.'' Another commenter, focusing both on the ''otherwise due'' language, as well as on the regulatory language stating that there need not be evidence of affirmative government demands for payment, commented that the word ''due'' means ''immediately enforceable,'' and therefore, in the absence of an automatic or formal final assessment of the fee, fine, or penalty, claimed that Commerce lacks the statutory authority to treat the non-collection of such obligations as a countervailable subsidy. In other words, for example, if a law is passed that exempts certain companies from paying certain fines, until those fines actually come due and the government demands payment, the commenter stated that the revenue cannot be due or ''forgone.'' Therefore, the commenter suggested that Commerce should provide for this alleged revenue forgone limitation in the regulation.

Another commenter stated that the proposed regulation presents a vague definition of government inaction and unreasonably expands the scope of subsidies permitted by law, while other commenters expressed concerns that Commerce's practice and the regulation undermines the sovereign authority of foreign regulatory and enforcement agencies to determine the extent to which they will pursue, settle, or dismiss these types of claims. They expressed concerns that this regulation fails to account for legitimate disputes between the foreign government regulatory or enforcement authority and the foreign producer, including, for example settlements of litigation in which the government determines that a lesser amount, or nonpayment, of a fee, fine, or penalty is acceptable, as part of a bigger settlement package.

Commerce's Response:

In response to the request that Commerce include in the regulation that the agency could rely on evidence from third parties, such as reports by international or non-governmental organizations, to establish the existence of unpaid fees, fines, or penalties, Commerce has determined that no such additional language is needed. It is Commerce's practice in determining if there is a financial contribution, including a financial contribution in the form of revenue forgone, to consider all of the information on the record before it. That would include international and non-governmental organization reports, but it could also include other sources of information. Therefore, consistent with long-standing established practice, in making any findings or determinations under this regulation, Commerce will analyze and consider all of the facts and information on the record of the proceeding. Accordingly, Commerce has determined not to include the language suggested by that commenter in the regulation.

With respect to the suggestion that Commerce should clarify that § 351.529 applies when the law itself excludes certain industries, enterprises, or other groups from paying certain fees, fines, or penalties, Commerce does not disagree that it could apply, but we do not believe that the regulation should be revised. Without question, a *de jure* exemption in the law from the requirement to pay a fee, fine, penalty, direct tax, indirect tax, or import charge, or an exemption from the requirements of various laws, regulations, or programs, can confer a countervailable subsidy within the meaning of the Act. However, Commerce can address such subsidies in its application of the CVD law with or without § 351.529. The issue is whether language specific to exclusions from payment by statute or regulation should be added to this regulatory provision unique to fees, fines, and penalties. We have decided that the inclusion of such language would be inappropriate because similar language does not exist in the regulatory provisions for direct taxes, indirect taxes, import charges, and other relevant revenue forgone examples.

Section 771(5)(D)(ii) of the Act states that there is a financial contribution conferred by forgoing or not collecting revenue that is otherwise due, (*e.g.,* granting tax credits or deductions from taxable income), and the SAA states that although section 771(5)(D) of the Act provides a list of four broad categories of government practices that constitute a ''financial contribution,'' the examples of particular types of government practices under each of these categories are not intended to be exhaustive.[240] Therefore, the range of government acts or practices that constitute revenue forgone is broad. We are concerned that if we applied the suggested language in this particular regulatory provision, but not to others where it would also naturally apply, a court might incorrectly hold that we intended for such a requirement to only apply to some, and not all, of the regulations addressing revenue forgone by a government through nonpayment or non-collection of certain obligations. That is not Commerce's intention because *de jure* exemptions from payment of financial obligations are countervailable across the board for all types of revenue forgone by the government. Thus, we are not including the suggested language in § 351.529.

In response to the commenters who suggested that Commerce should include the ability of the agency to countervail weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, and environmental protections in this regulation, we disagree that such a request is consistent with our intentions in issuing § 351.529. Section 351.529 is intended to codify our long-standing practice of treating unpaid and deferred fees, fines, and penalties as a countervailable subsidy. It was never intended to address all subsidies conferred by government inaction.

However, this regulation was also never intended to preclude Commerce from addressing either the inactions or measures of a government under the other forms of financial contributions

[240] *See* SAA at 927.

defined within the statute. Section 701(a) of the Act requires Commerce to impose a CVD equal to the countervailable subsidies conferred either directly or indirectly upon the manufacture, production, or exportation of subject merchandise. Therefore, any government act, measure, or practice that provides a financial contribution and a benefit within the meaning of sections 771(5)(D) and 771(5)(E) of the Act and is specific within the meaning of section 771(5A) of the Act is countervailable. In addition, our regulations explicitly acknowledge that there may be cases where a government program is not covered by a specific rule and provide for a general rule as to the benefit measurement for those types of programs.[241] Accordingly, although Commerce finds that it would be inappropriate to include other areas of government inaction in a regulation drafted to address, specifically, the nonpayment of fees, fines, and penalties, Commerce also finds that the refusal to include such language in the regulation in no way supports or detracts from the commenters' points with respect to the countervailability of other forms of government inaction.

With regard to the arguments about the term ''otherwise due,'' the financial contribution, and the related benefit, under the language of this regulation is the amount of the payment that was required of a party but was not made or was made only in part. Given the potential range of fees, fines, and penalties that could fall within this regulation and the various foreign government regulations, policies, and practices that may cover any of these fees, fines, and penalties, Commerce does not believe that it can provide further guidance in the regulation as to the timing of benefits. The timing of the benefit will differ depending on the facts on the record (*e.g.,* the terms of a fine, the various forms the fine might take, and types of payment that a party may use to pay for all, or some, of the fine). Thus, further language in the regulation on the timing of a benefit could be counterproductive and unnecessarily limit Commerce's ability to address the timing of a benefit based on the unique facts of a record before it.

Moreover, with respect to the alleged definition of revenue ''otherwise due'' and revenue forgone, we disagree with that commenter's understanding of the CVD law in general. Section 771(5)(D) of the Act defines one type of financial contribution as forgoing or not collecting revenue that is otherwise due. Congress, in creating and enacting the CVD law, did not provide a statutory definition for the word ''due.'' Thus, the commenter's presented definition of ''due'' is not binding. Indeed, the explicit language within the Act uses the phrase ''not collecting'' without the use of any qualifier such as ''automatic'' or ''final assessment,'' as suggested by the commenter. Although not a controlling definition, even the cite to *Black's Law Dictionary* used by the commenter itself for the term ''due'' does not, in fact, include within its definition the words ''automatic'' or ''final,'' as suggested by the commenter.[242]

Furthermore, the commenter's points with respect to the limitations of a revenue forgone analysis are illogical. For example, if a government creates an income tax law which sets the corporate income rate at 25 percent and makes it applicable to all corporations except those in the car industry, it would be nonsensical to claim that a countervailable subsidy has not been provided to the car industry because no bill was demanded of the car manufacturers. In creating this income tax law, the government undertook an act or practice to exempt one industry from income taxes. Similarly, if a government created a law to address the releasing of pollutants into the water which provided for fines of companies that violate this law, but specifically exempted or simply did not include the car industry within this law, this exclusion or exemption would provide a financial contribution and benefit under the statute to the car industry if it was determined that an investigated car manufacture released pollutants into the water, and the benefit would be based on the amount of the fines it otherwise would have been assessed under the law if it were any manufacturer other than a car manufacturer.

In addition, it is counterintuitive to argue that a financial contribution within the meaning of section 771(5)(D)(ii) of the Act would not exist if a government exempts an enterprise or industry from the requirements of a law, regulation, or program that imposes fees, fines, or penalties (or taxes for that matter). Indeed, with respect to exporters, a government providing exporters with such exemptions is the very definition of an export subsidy, a type of countervailable subsidy explicitly referenced in section 771(5A)(B) of the Act. As the U.S. Supreme Court stated in *Zenith,*[243] the CVD law was intended to offset the unfair competitive advantages that foreign producers would otherwise enjoy from export subsidies provided by their governments, and the points made by the commenter on revenue forgone in this context would be contrary to those intentions. Accordingly, Commerce will not include the limitations suggested by that commenter in § 351.529.

With respect to the claim that the regulation presents a vague definition of government inaction and unreasonably expands the scope of subsidies, we disagree. The regulation is limited only to the nonpayment of fees, fines, and penalties, and the regulation explicitly addresses revenue forgone by the government it was otherwise due, thereby, providing a financial contribution that benefits the party not paying the fee, fine, or penalty.

We also disagree with that same commenter's claim that the regulation unreasonably expands the scope of subsidies which Commerce may lawfully address. Section 351.102(a)(25) of our regulations state that ''government-provided'' is a shorthand expression for an act or practice that is alleged to be a countervailable subsidy. Under section 771(5)(D) of the Act, a government act or practice may provide a financial contribution, which under section 771(5)(E) of the Act may confer a benefit to the recipient. If Commerce determines under section 771(5A) of the Act that the financial contribution providing a benefit is specific, then Commerce may countervail that subsidy.[244] Moreover, as noted above, the SAA states that section 771(5)(D) of the Act provides a list of four broad categories of government practices that constitute a ''financial contribution,'' and that the examples of particular types of government practices under each of these categories are not intended to be exhaustive.[245] The nonpayment and non-collection of fees, fines, and penalties is a clear example of revenue forgone under section 771(5)(D) of the Act, and therefore, this regulation in no way ''expands'' the scope of subsidies which Commerce may address in its CVD law.

Finally, in response to the concerns of certain commenters that § 351.529 undermines the sovereign authority of

[241] *See* § 351.503(a) and (b).

[242] *See Black's Law Dictionary, 2nd Ed.,* ''due,'' retrieved November 8, 2023, *https://thelaw dictionary.org/due.* (''Owing; payable; justly owed. That which one contracts to pay or perform to another; that which law or justice requires to be paid or done'' and ''Owed, or owing, as distinguished from payable. A debt is often said to be due from a person where he is the party owing it, or primarily bound to pay, whether the time for payment has or has not arrived'').

[243] *See Zenith Radio Corporation* v. *United States,* 437 U.S. 443, 455 (1978) (*Zenith*).

[244] *See* SAA at 925.

[245] *Id.* at 927.

foreign regulatory and enforcement agencies to determine the extent to which they will pursue, settle, or dismiss these types of claims, we disagree. Neither the Act nor the SCM Agreement ''undermine{} the sovereign authority'' of foreign governments, and this regulatory provision is consistent with both.

For example, a foreign government is free to subsidize its car industry; however, the Act and the SCM Agreement allow the United States government to offset those subsidies with countervailing duties. If a foreign government does not wish to collect a fee, fine, or penalty that should have been paid by one of its domestic car manufacturers, it is free not to do so as well. Commerce is not suggesting that the foreign government cannot prioritize the collection of certain financial obligations by certain parties over others. However, under both the Act and the SCM Agreement, just as the foreign government has the right to not collect foreign fees, fines, and penalties, the United States has the right to countervail that non-collection of foreign fees, fines, and penalties by the foreign government.

With respect to the issue about settlements and litigation, Commerce recognizes that where there is the presence of an independent judiciary system, there could be a legitimate legal dispute between two parties such as a government agency and a private company with respect to money or taxes due. That could lead to a court holding that the private party pay less or no fees, fines, and penalties. It could also lead to the payment of less or no fees, fines, or penalties pursuant to a larger litigation settlement between the government and a private company. Commerce recognizes such holdings and settlements arising out of litigation occur both in the United States, as well as other countries, and that the existence of such holdings and settlements could be facts on the record before Commerce in considering whether to countervail or not countervail the nonpayment and non-collection of certain fees, fines, or penalties.

However, it is important to emphasize that the judgment of an independent court on a legitimate legal dispute is different from a court accepting a settlement of a dispute between the government and a private party. Unlike a court holding, a settlement of a debt, fee, or fine between a government and a private party could constitute both a financial contribution and a benefit under the Act regardless of whether that settlement has been sanctioned by a court. The countervailability of such a subsidy would be based on the facts on the record.

We understand that foreign governments may decide to waive the payment of certain fees, fines, and penalties for a host of reasons, including litigation, and ultimately such a waiver is a benefit to the recipient regardless of the motivations of the foreign government. Accordingly, we disagree with the commenters that stated that Commerce cannot countervail the nonpayment of fees, fines, or penalties depending on the reason provided for such a waiver by the foreign government. Nonpayment and non-collection of fees, fines, and penalties is, by any other identifier, nonpayment and non-collection of fees, fines, and penalties, and in many cases, Commerce will be able to countervail such nonpayment and non-collection as revenue forgone by the foreign government in accordance with § 351.529.

17. Commerce is changing each reference to Customs Service in part 351 of its regulations to U.S. Customs and Border Protection and adding a definition of U.S. Customs and Border Protection—§ 351.102(b)(53).

The Customs Service, which was created on July 31, 1789, was integrated into a new agency, the U.S. Customs and Border Protection, on March 1, 2003. However, Commerce's antidumping and countervailing duty regulations continue to refer to the agency which administers the trade remedy laws in part 351 as the Customs Service, other than in the definition of ''Customs Service'' in current § 351.102(b)(14). Commerce is now amending its regulations in this final rule to remove the term Customs Service, wherever it appears, and to replace it with the correct agency name—U.S. Customs and Border Protection. Furthermore, Commerce has added a definition for the term U.S. Customs and Border Protection to its regulations.

18. Commerce is adding the definition of the term ''days'' to clarify that the term normally means calendar days when used throughout part 351—§ 351.102(b)(14).

Commerce's regulations currently do not define whether the term ''days,'' when used throughout part 351, references calendar days or business days, and Commerce is frequently asked by outside parties whether certain regulatory deadlines are based on calendar or business days. Commerce has consistently treated the term ''days'' in its regulations, with no further qualifier, to mean calendar days.[246] Accordingly, to add clarity to the regulations, Commerce is amending the regulation at § 351.102(b)(14), replacing the definition of ''Customs Service'' with the definition of the term ''days.'' The definition of ''days'' states that for purposes of deadlines and time limits for submissions, if the term ''days'' is used, without a qualifier, the term will generally mean calendar days. If Commerce intends in a particular provision to use business days instead, then the definition states that the regulation will explicitly indicate that the business day alternative applies.[247]

Summary of Changes From the Proposed to the Final Rule

Commerce has made the following changes to the regulatory text in the *Proposed Rule* that are reflected in the final regulatory text and preamble of this final rule as follows:

Commerce has revised § 351.102(b)(14) to define the term ''days'' to explain that the term generally means calendar days and not business days, and if Commerce wishes for business days to be applied, it will explicitly state as such.

Commerce revised § 351.104(a)(1) and added § 351.104(a)(3) through (7) to identify the information sources that may be cited in submissions without submitting them on the official record and the information sources that must be submitted on the official record for Commerce to consider them in the ongoing segment of a proceeding. All citations to public documents from other segments and proceedings which may be cited without submitting them on the record must include the ACCESS barcode in the citation.

Commerce determined to not revise § 351.301(c)(4) as was presented in the *Proposed Rule,* in agreement with the commenters who expressed concerns that the proposed revision would not provide interested parties with sufficient opportunity to respond to

[246] *See e.g., Sodium Nitrite from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 87 FR 50604 (August 17, 2022) (stating, in accordance with § 351.210(b), ''Commerce will make its final determination no later than 135 days after the publication of this preliminary determination.''); and *Sodium Nitrite from India: Final Affirmative Determination of Sales at Less Than Fair Value,* 88 FR 1052 (January 6, 2023) (announcing Commerce's final determination signed on December 30, 2022, or 135 calendar days after the preliminary determination).

[247] *See, e.g.,* § 351.304(d)(1) (stating that a submitter must take certain actions ''within two business days after receiving the Secretary's explanation'').

information placed by Commerce on the record late in a segment of a proceeding.

Commerce revised §§ 351.225(f), 351.226(f), and 351.227(d) to reflect that only the filing and timing restrictions set forth in § 351.301(c) do not apply to the filing deadlines set forth in the scope, circumvention, and covered merchandise regulations. Further, in response to comments and concerns from outside parties, the proposed amendments to § 351.225(q) have been revised to limit and further clarify the situations in which a scope clarification may be applied, and the means by which it may be issued. Commerce also made minor edits to the terminology proposed in §§ 351.225(m)(2), 351.226(m)(2), and 351.227(m)(2) to clarify what preliminary and final documents from scope, circumvention, and covered merchandise segments should be placed on the CVD record once a proceeding covering companion orders is completed on the AD record.

Commerce revised certain language in the newly proposed § 351.301(c)(6), clarifying that Commerce can only guarantee that it will address Notices of Subsequent Authority filed within 30 days of the issuance of the alleged authority and 30 days before a final determination or final results deadline (and 25 days before a final determination or final results deadline for rebuttal comments), but removed proposed language which would have stated that Commerce would not consider and address submissions after the pre-final determination and results deadlines. Commerce agreed with commenters who explained that when Commerce is able, it must address subsequent authorities, but notes that the regulation explains that Commerce may not be able to consider and address such authorities if there is little time after the submission is filed before the issuance date of a final determination or results.

With respect to the proposed amendments to § 351.308, Commerce revised the lettering to have the CVD AFA hierarchy appear at paragraph (j), reserving paragraphs (g), (h), and (i) for future rulemaking to codify, in part, additions Congress made to section 776 of the Act in 2015. Furthermore, in response to multiple comments, Commerce removed its ''above-zero'' threshold in the first step of the CVD AFA hierarchy for investigations, and instead replaced it with a ''above-*de minimis*'' threshold to better reflect the statutory purpose of AFA to induce cooperation by interested parties.

Commerce made minor changes to its regulations addressing government inaction which distorts prices or costs through weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, and environment protections. Specifically, Commerce modified § 351.416(d)(2)(v) of the PMS regulation to clarify that if Commerce looks to the actions of governments in other countries to analyze the cost effects of government inaction, it will normally consider only the actions of governments in comparable economies. Furthermore, Commerce revised the proposed language for § 351.408(d)(1)(i) and (ii) to clarify that it is Commerce who determines as part of its surrogate value analysis if a proposed value on the record ''was derived'' from a country that provides broadly available export subsidies,'' that particular instances of subsidization occurred with respect to a proposed surrogate value, and that a proposed surrogate value was subject to an AD order, or was derived from a facility, party, industry, intra-country region or a country with weak, ineffective, or nonexistent protections.

Commerce substantially revised its proposed PMS regulation, § 351.416, in response to many outside comments on the regulation. Such revisions include the following: (1) addition and revision of terminology throughout the regulation for consistency and clarification; (2) clarification in § 351.416(a) that the regulation is defining both sales-based particular market situations and cost-based particular market situations; (3) the removal of the terms ''distinct'' and ''considerably'' from proposed § 351.416(a), (b), (c), (d), and (e), so as not to create any confusion that further standards or tests are required as part of Commerce's PMS analysis; (4) revisions to § 351.416(c) to explain that Commerce's sales-based PMS analysis is limited to certain period of investigation or review; (5) revisions to § 351.416(d) to clarify that Commerce's analysis is limited to the relevant period of investigation or review, and is divided into three parts—a finding of a circumstance or set of circumstances that impacts costs or prices, a finding that costs were distorted, and a finding that it is more likely than not that the circumstances or set of circumstances at issue contributed to the distortion of the costs of production of the subject merchandise; (6) additional changes to § 351.416(d) to clarify Commerce's analysis of a cost-based PMS allegation, including a listing of information in § 351.416(d)(4) that will not preclude it from finding the existence of a PMS; (7) modifications to § 351.416(e) to explain that a market situation's particularity is not determined by the number of impacted parties, but only if it applies to certain parties and products, and that the provision applies equally to both sales-based and cost-based PMS determinations; (8) extensive changes to § 351.416(f)—explaining that if Commerce determines the existence of a cost-based PMS, it can adjust its calculations of the cost of production, and if it cannot precisely quantify the distortions in the cost of production caused by the PMS, then it can use any reasonable methodology to adjust its calculations based on record information. Furthermore, the regulation provides that even if Commerce determines the existence of a cost-based PMS, it may determine to make no adjustment if it believes an adjustment is not warranted, and the regulation provides guidance on factors which Commerce may consider in determining if an adjustment is appropriate; (9) revisions to certain language used in its proposed examples of cost-based particular market situations in § 351.416(g), a refinement of the circumstances described in § 351.406(g)(9), and provision of more extensive descriptions of nongovernmental actions in § 351.416(g)(12) that could become a PMS which distorts a producer's costs of production; and (10) certain minor revisions to § 351.416(h) to bring that provision into conformity with the language of other provisions of the PMS regulation.

Commerce modified the proposed amendment to § 351.505(d), the loan regulation, to state that Commerce will normally treat a loan as a grant if no ''payments on the loan'' have been made in three years unless the loan recipient can demonstrate that nonpayment is consistent with the terms of a comparable commercial loan it could obtain on the market or ''the payments on the loan are consistent with the terms of the loan contract.'' Commerce made the modifications to allow for parties to show that the payments on the loan were consistent with the terms of a contract, and not to treat accrued, unpaid interest in every case as a grant, as proposed in the *Proposed Rule,* in response to comments filed on the record addressing ''balloon'' loans and the case-specific nature of the inclusion, or exclusion, of accrued, unpaid interest in Commerce's benefit calculations.

Commerce also made a small change to its proposed amendments to § 351.507(c), its equity regulation, adding the word ''outside'' to the term ''private investor,'' to clarify that the sentence was meant only to apply to

outside private investors, and not private investors within a company.

Lastly, the Customs Service was integrated into a new agency, the U.S. Customs and Border Protection, in 2003. Commerce amended its regulations in this final rule to remove the term ''the Customs Service,'' wherever it appears, and to replace it with the correct agency name—U.S. Customs and Border Protection. In furtherance of that modification, Commerce has also added a definition of U.S. Customs and Border Protection at § 351.102(b)(53).

Classifications

Executive Order 12866

The Office of Management and Budget has determined that this final rule is significant for purposes of Executive Order 12866.

Executive Order 13132

This final rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132 of August 4, 1999, 64 FR 43255 (August 10, 1999).

Paperwork Reduction Act

This final rule does not contain a collection of information subject to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

The Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the rule would not have a significant economic impact on a substantial number of small business entities. A summary of the need for, objectives of, and legal basis for this rule is provided in the preamble and is not repeated here. Commerce did not receive comments opposing this certification in response to the *Proposed Rule.* Thus, a Final Regulatory Flexibility Analysis is not required and has not been prepared.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: March 8, 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.

For the reasons stated in the preamble, the U.S. Department of Commerce amends 19 CFR part 351 as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

■ 2. In part 351, remove the text ''the Customs Service'' wherever it appears and add in its place the text ''U.S. Customs and Border Protection''.

■ 3. In § 351.102, revise paragraph (b)(14) and add paragraph (b)(53) to read as follows:

§ 351.102 Definitions.

* * * * *

(b) * * *

(14) *Days.* Deadlines and time limits for submissions with the Secretary that reference a number of ''days,'' will generally mean calendar days. If certain deadlines or time limits are intended to apply to business days instead, which are Monday through Friday, except Federal holidays, then the applicable regulatory provisions implementing such deadlines or time limits will explicitly indicate the use of the business day alternative.

* * * * *

(53) *U.S. Customs and Border Protection. U.S. Customs and Border Protection* means United States Customs and Border Protection of the United States Department of Homeland Security.

■ 4. In § 351.104, revise paragraph (a)(1) and add paragraphs (a)(3) through (7) to read as follows:

§ 351.104 Record of proceedings.

(a) * * *

(1) *In general.* The Secretary will maintain an official record of each antidumping and countervailing duty proceeding. The Secretary will include in the official record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of a proceeding that pertains to the proceeding. The official record will include government memoranda pertaining to the proceeding, memoranda of ex parte meetings, determinations, documents published in the **Federal Register**, and transcripts of hearings. The official record will contain material that is public, business proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each segment of the proceeding. For a scope, circumvention, or covered merchandise inquiry pertaining to companion antidumping and countervailing duty orders conducted on the record of the antidumping duty segment of the proceeding, pursuant to §§ 351.225, 352.226, and 351.227, the record of the antidumping duty segment of the proceeding normally will be the official record.

* * * * *

(3) *Filing requirements for documents not originating with the Department*—(i) *In general.* Documents not originating with the Department must be placed on the official record for the documents to be considered by the Secretary in the Secretary's analysis and determinations. With the exception of the sources enumerated in paragraph (a)(3)(ii) of this section, mere citations to hyperlinks, website Uniform Resource Locators (URLs), or other sources of information do not constitute placement of the information from those sources on the official record. Unless the exceptions of paragraph (a)(3)(ii) apply, the filing and timing requirements of § 351.301 apply to such information.

(ii) *Exceptions for publicly available documents not originating with the Department.* The following publicly available sources of information not originating with the Department will be considered by the Secretary in the Secretary's analysis and determinations when fully cited by submitting parties without the requirement that the information sources be placed on the official record: United States statutes and regulations; published United States legislative history; United States court decisions and orders; **Federal Register** notices and determinations; Commission reports adopted by reference in the **Federal Register**; dictionary definitions; international agreements identified in § 351.101(a) and dispute settlement determinations arising out of those international agreements. The Secretary may decline to consider sources of information in its analysis or determination that are not cited in full.

(4) *Filing requirements for proprietary, privileged, and classified information.* When lawfully permitted, all proprietary, privileged, and classified information, including documents originating with the

Department containing such information from another segment of the same proceeding, must be placed on the official record in their entirety for the Secretary to consider that information in its analysis and determinations, and the filing and timing restrictions of § 351.301 apply to such information.

(5) *Notices and determinations originating with the Department and published in the* **Federal Register**. All notices and determinations originating with the Department and published in the **Federal Register** may be cited by parties in submissions for consideration by the Secretary without the requirement that the notice or determination be placed on the official record, as long as those notices and determinations are cited in full. The Secretary may decline to consider notices or determinations that are not cited in full. Section 351.301 does not apply to **Federal Register** notices and determinations.

(6) *Public versions of certain unpublished documents originating with the Department which may always be referenced by citation without placing the information on the record.* Public versions of the following documents originating with the Department derived from other segments and proceedings may be cited in submissions for consideration by the Secretary without being placed on the record, as long as those documents are cited in full. In providing a citation to a document originating with the Department, the submitter must explain in the text of the submitted document the factual and legal reasons for which the submitter is citing the document and an Enforcement and Compliance Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS) barcode number associated with the document must be included as part of the citation. If an ACCESS barcode number is not included in the citation or is incorrectly transcribed, or the document is not cited in full, the Secretary may decline to consider the cited decision document in its analysis or determination. The timing and filing restrictions of § 351.301 shall not apply to these documents:

(i) Preliminary and final issues and decision memoranda issued in investigations pursuant to §§ 351.205 and 351.210;

(ii) Preliminary and final issues and decision memoranda issued in administrative reviews, pursuant to § 351.213;

(iii) Preliminary and final issues and decision memoranda issued in new shipper reviews, pursuant to § 351.214;

(iv) Preliminary and final issues and decision memoranda in changed circumstances reviews, pursuant to § 351.216;

(v) Preliminary and final issues and decision memoranda in sunset reviews, pursuant to § 351.218;

(vi) Preliminary and final decision memoranda issued in scope inquiries pursuant to § 351.225, circumvention inquiries pursuant to § 351.226, and covered merchandise inquiries pursuant to § 351.227;

(vii) Draft and final redeterminations on remand;

(viii) Draft and final redeterminations issued pursuant to section 129 of the Uruguay Round Agreements Act;

(ix) Initiation decision documents, such as initiation checklists;

(x) New subsidy allegation memoranda;

(xi) Scope memoranda issued in an investigation; and

(xii) Post-preliminary determination or results memoranda addressing issues for the first time in the period of time between preliminary and final determinations or results.

(7) *Special rules for public versions of documents originating with the Department with no associated ACCESS barcode numbers.* Public versions of documents originating with Commerce in other segments or proceedings under paragraph (a)(6) of this section but not associated with an ACCESS barcode number, including documents issued before the implementation of ACCESS, must be submitted on the record in their entirety to be considered by the Secretary in its analysis and determinations and are subject to the timing and filing restrictions of § 351.301.

* * * * *

■ 5. In § 351.225:

■ a. Revise paragraph (c)(1);

■ b. Add paragraphs (c)(2)(x) and (c)(3);

■ c. Revise paragraph (d)(1);

■ d. Add introductory text to paragraph (f);

■ e. Revise paragraph (l)(1);

■ f. In paragraph (l)(5), remove ''the Customs Service's'' and add in its place ''the U.S. Customs and Border Protection's''; and

■ g. Revise paragraphs (m)(2) and (q).

The revisions and additions read as follows:

§ 351.225 Scope rulings.

* * * * *

(c) * * *

(1) *Contents.* An interested party may submit a scope ruling application requesting that the Secretary conduct a scope inquiry to determine whether a product, which is or has been in actual production by the time of the filing of the application, is covered by the scope of an order. If the product at issue has not been imported into the United States, the applicant must provide evidence that the product has been commercially produced and sold. The Secretary will make available a scope ruling application, which the applicant must fully complete and serve in accordance with the requirements of paragraph (n) of this section.

(2) * * *

(x) If the product has not been imported into the United States as of the date of the filing of the scope ruling application:

(A) A statement that the product has been commercially produced;

(B) A description of the countries in which the product is sold, or has been sold; and

(C) Relevant documentation which reflects the details surrounding the production and sale of that product in countries other than the United States.

(3) *Comments on the adequacy of the request.* Within 10 days after the filing of a scope ruling application under paragraph (c)(1) of this section, an interested party other than the applicant is permitted one opportunity to submit comments regarding the adequacy of the scope ruling application.

(d) * * *

(1) *Acceptance and initiation of a scope inquiry based on a scope ruling application.* Except as provided under paragraph (d)(1)(ii) or (d)(2) of this section, within 30 days after the filing of a scope ruling application, the Secretary will determine whether to accept or reject the scope ruling application and to initiate or not initiate a scope inquiry, or, in the alternative, paragraph (d)(1)(ii) will apply.

(i) If the Secretary determines that a scope ruling application is incomplete or otherwise unacceptable, the Secretary may reject the scope ruling application and will provide a written explanation of the reasons for the rejection. If the scope ruling application is rejected, the applicant may resubmit the full application at any time, with all identified deficiencies corrected.

(ii) If the Secretary issues questions to the applicant seeking clarification with respect to one or more aspects of a scope ruling application, the Secretary will determine whether or not to initiate within 30 days after the applicant files a timely response to the Secretary's questions.

(iii) If the Secretary does not reject the scope ruling application or initiate the scope inquiry within 31 days after the filing of the application or the receipt of

a timely response to the Secretary's questions, the application will be deemed accepted, and the scope inquiry will be deemed initiated.

* * * * *

(f) *Scope inquiry procedures.* The filing and timing restrictions of § 351.301(c) do not apply to this paragraph (f), and factual information submitted inconsistent with the terms of this paragraph may be rejected as unsolicited and untimely.

* * * * *

(l) * * *

(1) When the Secretary initiates a scope inquiry under paragraph (b) or (d) of this section, the Secretary will notify U.S. Customs and Border Protection of the initiation and direct U.S. Customs and Border Protection to continue the suspension of liquidation of entries of products subject to the scope inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order. Such suspension shall include, but shall not be limited to, entries covered by the final results of administrative review of an antidumping or countervailing duty order pursuant to § 351.212(b), automatic assessment pursuant to § 351.212(c), and a rescinded administrative review pursuant to § 351.213(d), as well as any other entries already suspended by U.S. Customs and Border Protection under the antidumping and countervailing duty laws which have not yet been liquidated in accordance with 19 CFR part 159.

* * * * *

(m) * * *

(2) *Companion antidumping and countervailing duty orders.* If there are companion antidumping and countervailing duty orders covering the same merchandise from the same country of origin, the requesting interested party under paragraph (c) of this section must file the scope ruling application pertaining to both orders on the records of both the antidumping duty and countervailing duty proceedings. If the Secretary accepts the scope applications on both records under paragraph (d) of this section, the Secretary will notify the requesting interested party that all subsequent filings should be filed only on the record of the antidumping duty proceeding. If the Secretary determines to initiate a scope inquiry under paragraph (b) or (d) of this section, the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping duty proceeding. Once the Secretary issues a final scope ruling on the record of the antidumping duty proceeding, the Secretary will include on the record of the countervailing duty proceeding a copy of the scope ruling memoranda, a copy of the preliminary scope ruling memoranda, if one had been issued, and all relevant instructions to U.S. Customs and Border Protection.

* * * * *

(q) *Scope clarifications.* The Secretary may issue a scope clarification at any time which provides an interpretation of specific language in the scope of an order and addresses other scope-related issues but does not address or determine whether a product is covered by the scope of an order in the first instance other than in the situations listed in this paragraph (q).

(1) Scope clarifications may be used in the following situations to clarify:

(i) Whether a product is covered or excluded by the scope of an order based on two or more previous scope determinations covering products which have the same or similar physical characteristics (including chemical, dimensional, and technical characteristics);

(ii) Whether a product covered by the scope of an order, and for which coverage is not at issue, is not subject to the imposition of antidumping or countervailing duties pursuant to a statutory exception to the trade remedy laws, such as the limited governmental importation exception set forth in section 771(20)(B) of the Act;

(iii) Whether language or descriptors in the scope of an order that are subsequently updated, revised, or replaced, in the following circumstances, continue to apply to the product at issue:

(A) Modifications to the language in the scope of an order pursuant to litigation or a changed circumstances review under section 751(b) of the Act;

(B) Changes to Harmonized Tariff Schedule classifications, as administered by the Commission; and

(C) Changes to industrial standards set forth in a scope, as determined by the industry source for those standards identified in the scope; and

(iv) To clarify an analysis conducted by Commerce in a previous scope determination or scope ruling. For example, an issue may arise as to whether certain processing, observed in a segment of proceeding and conducted in a third country, falls within a stage of production previously determined by the Secretary in a country-of-origin analysis in the same proceeding, pursuant to paragraph (j)(2) of this section, to be the stage of production at which the essential component of the product is produced or where the essential characteristics of the product are imparted.

(2) Scope clarifications may take the form of an interpretive footnote to the scope when the scope is published or issued in instructions to U.S. Customs and Border Protection, or in a memorandum issued in an ongoing segment of a proceeding. At the discretion of the Secretary, a scope clarification may also take the form of preliminary and final notices of scope clarification published in the **Federal Register**. If the Secretary decides to publish preliminary and final notifications of scope clarification, it must provide interested parties at least 30 days after the publication of the preliminary notification of scope clarification to file comments with the Secretary. The Secretary will address those comments in the final notification of scope clarification published in the **Federal Register**.

■ 6. In § 351.226:

■ a. Add paragraph (c)(3);

■ b. Revise paragraphs (d)(1) and (e)(1);

■ c. Add introductory text to paragraph (f);

■ d. In paragraph (l)(5), remove ''the Customs Service's'' and add in its place ''the U.S. Customs and Border Protection's''; and

■ e. Revise paragraph (m)(2).

The additions and revisions read as follows:

§ 351.226 Circumvention inquiries.

* * * * *

(c) * * *

(3) *Comments and information on the adequacy of the request.* Within 10 days after the filing of a circumvention inquiry request under paragraph (c)(1) of this section, an interested party other than the requestor is permitted one opportunity to submit comments and new factual information regarding the adequacy of the circumvention inquiry request. Within five days after the filing of new factual information in support of adequacy comments, the requestor is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct that factual information.

(d) * * *

(1) *Initiation of a circumvention inquiry.* Except as provided under paragraphs (d)(1)(ii) and (d)(2) of this section, within 30 days after the filing of a request for a circumvention inquiry, the Secretary will determine whether to accept or reject the request and whether to initiate or not initiate a

circumvention inquiry. If it is not practicable to make such determinations within 30 days, the Secretary may extend the 30-day deadline by an additional 15 days if no interested party has filed new factual information in response to the circumvention request pursuant to paragraph (c)(3) of this section. If interested parties have filed new factual information pursuant to paragraph (c)(3) of this section, the Secretary may extend the 30-day deadline by an additional 30 days.

(i) If the Secretary determines that the request is incomplete or otherwise unacceptable, the Secretary may reject the request, and will provide a written explanation of the reasons for the rejection. If the request is rejected, the requestor may resubmit the full request at any time, with all identified deficiencies corrected.

(ii) If the Secretary issues questions to the requestor seeking clarification with respect to one or more aspects of a circumvention inquiry request, the Secretary will determine whether or not to initiate within 30 days after the requestor files a timely response to the Secretary's questions.

(iii) If the Secretary determines that a request for a circumvention inquiry satisfies the requirements of paragraph (c) of this section, the Secretary will accept the request and initiate a circumvention inquiry. The Secretary will publish a notice of initiation in the **Federal Register**.

* * * * *

(e) * * *

(1) *Preliminary determination.* The Secretary will issue a preliminary determination under paragraph (g)(1) of this section no later than 150 days after the date of publication of the notice of initiation of paragraph (b) or (d) of this section. If the Secretary concludes that an extension of the preliminary determination is warranted, the Secretary may extend that deadline by no more than 90 additional days.

* * * * *

(f) *Circumvention inquiry procedures.* The filing and timing instructions of § 351.301(c) do not apply to this paragraph (f), and factual information submitted inconsistent with the terms of this paragraph may be rejected as unsolicited and untimely.

* * * * *

(m) * * *

(2) *Companion antidumping and countervailing duty orders.* If there are companion antidumping and countervailing duty orders covering the same merchandise from the same country of origin, the requesting interested party under paragraph (c) of this section must file the request pertaining to both orders on the record of both the antidumping duty and countervailing duty segments of the proceeding. If the Secretary accepts the circumvention requests on both records under paragraph (d) of this section, the Secretary will notify the requesting interested party that all subsequent filings should be filed only on the record of the antidumping duty proceeding. If the Secretary determines to initiate a circumvention inquiry under paragraph (b) or (d) of this section, the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping duty proceeding. Once the Secretary issues a final circumvention determination on the record of the antidumping duty proceeding, the Secretary will include on the record of the countervailing duty proceeding copies of the final circumvention determination memoranda, the final circumvention determination **Federal Register** notice, the preliminary circumvention determination memoranda, the preliminary circumvention determination **Federal Register** notice, and all relevant instructions to U.S. Customs and Border Protection.

* * * * *

■ 7. In § 351.227:

■ a. Add introductory text to paragraph (d);

■ b. In paragraph (d)(5)(i), remove ''The Customs Service'' and add in its place ''The U.S. Customs and Border Protection'';

■ c. Revise paragraphs (l)(1);

■ d. In paragraph (l)(5), remove ''the Customs Service's'' and add in its place ''the U.S. Customs and Border Protection's''; and

■ e. Revise paragraph (m)(2).

The addition and revisions read as follows:

§ 351.227 Covered merchandise referrals.

* * * * *

(d) *Covered merchandise inquiry procedures.* The filing and timing restrictions of § 351.301(c) do not apply to this paragraph (d), and factual information submitted inconsistent with the terms of this paragraph (d) may be rejected as unsolicited and untimely.

* * * * *

(l) * * *

(1) When the Secretary publishes a notice of initiation of a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary will notify U.S. Customs and Border Protection of the initiation and direct U.S. Customs and Border Protection to continue the suspension of liquidation of entries of products subject to the covered merchandise inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order. Such suspension shall include, but shall not be limited to, entries covered by a final results of administrative review of an antidumping or countervailing duty order pursuant to § 351.212(b), automatic assessment pursuant to § 351.212(c), and a rescinded administrative review pursuant to § 351.213(d), as well as any other entries already suspended by U.S. Customs and Border Protection under the antidumping and countervailing duty laws which have not yet been liquidated in accordance with 19 CFR part 159.

* * * * *

(m) * * *

(2) *Companion antidumping and countervailing duty orders.* If there are companion antidumping and countervailing duty orders covering the same merchandise from the same country of origin, and the Secretary determines to initiate a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary will initiate and conduct a single inquiry with respect to the product at issue only on the record of the antidumping duty proceeding. Once the Secretary issues a final covered merchandise determination on the record of the antidumping duty proceeding, the Secretary will include on the record of the countervailing duty proceeding a copy of the final covered merchandise determination memoranda, the final covered merchandise determination **Federal Register** notice, the preliminary covered merchandise determination memoranda and preliminary covered merchandise determination **Federal Register** notice, if a preliminary determination was issued, and all relevant instructions to U.S. Customs and Border Protection.

* * * * *

■ 8. In § 351.301, add paragraph (c)(6) to read as follows:

§ 351.301 Time limits for submissions of factual information.

* * * * *

(c) * * *

(6) *Notices of subsequent authority*—(i) *In general.* If a United States Federal court issues a decision, or the Secretary in another segment or proceeding issues a determination, that an interested party believes is directly relevant to an issue in an ongoing segment of the

proceeding, that interested party may submit a Notice of Subsequent Authority with the Secretary. Responsive comments and factual information to rebut or clarify the Notice of Subsequent Authority must be submitted by interested parties no later than five days after the submission of a Notice of Subsequent Authority.

(ii) *Timing restrictions for consideration.* The Secretary will consider and address a Notice of Subsequent Authority in its final determinations or final results which is submitted no later than 30 days after the alleged subsequent authority was issued and no later than 30 days before the deadline for issuing the final determination or results. Rebuttal submissions must be filed no later than 25 days before the deadline for issuing the final determinations or results. Given statutory deadlines for administrative proceedings, the Secretary may be unable to consider and address the arguments and applicability of alleged subsequent authorities adequately in a final determination or final results if a Notice of Subsequent Authority or rebuttal submission is submitted later in the segment of the proceeding.

(iii) *Contents of a notice of subsequent authority and responsive submissions.* A Notice of Subsequent Authority must identify the Federal court decision or determination by the Secretary in another segment or proceeding that is alleged to be authoritative to an issue in the ongoing segment of the proceeding, provide the date the decision or determination was issued, explain the relevance of that decision or determination to an issue in the ongoing segment of the proceeding, and be accompanied by a complete copy of the Federal court decision or agency determination. Responsive comments must directly address the contents of the Notice of Subsequent Authority and must explain how the responsive comments and any accompanying factual information rebut or clarify the Notice of Subsequent Authority.

■ 9. In § 351.306, revise paragraph (b) to read as follows:

§ 351.306 Use of business proprietary information.

* * * * *

(b) *By an authorized applicant.* (1) An authorized applicant may retain business proprietary information for the time authorized by the terms of the administrative protective order (APO).

(2) An authorized applicant may use business proprietary information for purposes of the segment of the proceeding in which the information was submitted.

(3) If business proprietary information that was submitted to a segment of the proceeding is relevant to an issue in a different segment of the same proceeding, an authorized applicant may place such information on the record of the subsequent segment as authorized by the APO of the segment where the business proprietary information was submitted.

(4) If business proprietary information that was submitted to a countervailing duty segment of the proceeding is relevant to a subsequent scope, circumvention, or covered merchandise inquiry conducted on the record of the companion antidumping duty segment of the proceeding pursuant to § 351.225(m)(2), § 351.226(m)(2), or § 351.227(m)(2), an authorized applicant may place such information on the record of the companion antidumping duty segment of the proceeding as authorized by the APO of the countervailing duty segment where the business proprietary information was submitted.

(5) If business proprietary information that was submitted to a scope, circumvention, or covered merchandise inquiry conducted on the record of a companion antidumping duty segment of the proceeding pursuant to § 351.225(m)(2), § 351.226(m)(2), or § 351.227(m)(2) is relevant to a subsequent countervailing duty segment of the proceeding, an authorized applicant may place such information on the record of the companion countervailing duty segment of the proceeding as authorized by the APO of the antidumping duty segment where the business proprietary information was submitted.

* * * * *

■ 10. In § 351.308, add reserved paragraphs (g) through (i) and paragraph (j) to read as follows:

§ 351.308 Determinations on the basis of facts available.

* * * * *

(g)–(i) [Reserved]

(j) *Adverse facts available hierarchy in countervailing duty proceedings.* In accordance with sections 776(d)(1)(A) and 776(d)(2) of the Act, when the Secretary applies an adverse inference in selecting a countervailable subsidy rate on the basis of facts otherwise available in a countervailing duty proceeding, the Secretary will normally select the highest program rate available using a hierarchical analysis as follows:

(1) For investigations, conducted pursuant to section 701 of the Act, the hierarchy will be applied in the following sequence:

(i) If there are cooperating respondents in the investigation, the Secretary will determine if a cooperating respondent used an identical program in the investigation and apply the highest calculated above-*de minimis* rate for the identical program;

(ii) If no rate exists which the Secretary is able to apply under paragraph (j)(1)(i), the Secretary will determine if an identical program was used in another countervailing duty proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the identical program;

(iii) If no rate exists which the Secretary is able to apply under paragraph (j)(1)(ii), the Secretary will determine if there is a similar or comparable program in any countervailing duty proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar or comparable program; and

(iv) If no rate exists which the Secretary is able to apply under paragraph (j)(1)(iii), the Secretary will apply the highest calculated above-*de minimis* rate from any non-company-specific program in a countervailing duty proceeding involving the same country that the Secretary considers the company's industry could possibly use.

(2) For administrative reviews, conducted pursuant to section 751 of the Act, the hierarchy will be applied in the following sequence:

(i) The Secretary will determine if an identical program has been used in any segment of the proceeding and apply the highest calculated above-*de minimis* rate for any respondent for the identical program;

(ii) If no rate exists which the Secretary is able to apply under paragraph (j)(2)(i), the Secretary will determine if there is a similar or comparable program within any segment of the same proceeding and apply the highest calculated above-*de minimis* rate for the similar or comparable program;

(iii) If no rate exists which the Secretary is able to apply under paragraph (j)(2)(ii), the Secretary will determine if there is an identical program in any countervailing duty proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the identical program or, if there is no identical program or above-*de minimis* rate available, determine if there is a similar or comparable program in any

countervailing duty proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar or comparable program; and

(iv) If no rate exists which the Secretary is able to apply under paragraph (j)(2)(iii), the Secretary will apply the highest calculated rate for any non-company-specific program from any countervailing duty proceeding involving the same country that the Secretary considers the company's industry could possibly use.

(3) When the Secretary uses an adverse facts available countervailing duty hierarchy, the following will apply:

(i) The Secretary will treat rates less than 0.5 percent as *de minimis;*

(ii) The Secretary will normally determine a program to be a similar or comparable program based on the Secretary's treatment of the program's benefit;

(iii) The Secretary will normally select the highest program rate available in accordance with the hierarchical sequence, unless the Secretary determines that such a rate is otherwise inappropriate; and

(iv) When applicable, the Secretary will determine an adverse facts available rate selected using the hierarchy to be corroborated in accordance with section 776(c)(1) of the Act.

§ 351.402 [Amended]

■ 11. In § 351.402, remove ''the Customs Service's'' and add in its place ''the U.S. Customs and Border Protection's'' in paragraph (f)(2)(ii).

■ 12. In § 351.408, add paragraph (d) to read as follows:

§ 351.408 Calculation of normal value of merchandise from nonmarket economy countries.

* * * * *

(d) *A determination that certain surrogate value information is not otherwise appropriate*—(1) *In general.* Notwithstanding the factors considered under paragraph (c) of this section, the Secretary may disregard a proposed market economy country value for consideration as a surrogate value if the Secretary determines that evidence on the record reflects that the use of such a value would be inappropriate.

(i) In accordance with section 773(c)(5), the Secretary may disregard a proposed surrogate value if the Secretary determines that the value is derived from a country that provides broadly available export subsidies, if particular instances of subsidization occurred with respect to that proposed surrogate value, or if that proposed surrogate value was subject to an antidumping order.

(ii) In addition, the Secretary may disregard a proposed surrogate value if the Secretary determines based on record evidence that the value is derived from a facility, party, industry, intra-country region or a country with weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, or environmental protections.

(2) *Requirements to disregard a proposed surrogate value based on weak, ineffective, or nonexistent protections.* For purposes of paragraph (d)(1)(ii) of this section, the Secretary will only consider disregarding a proposed market economy country value as a surrogate value of production if the Secretary determines the following:

(i) The proposed surrogate value at issue is for a significant input or labor;

(ii) The proposed surrogate value is derived from one country or an average of values from a limited number of countries; and

(iii) The information on the record supports a claim that the identified weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, or environmental protections undermine the appropriateness of using that value as a surrogate value.

(3) *The use of a surrogate value located in a country which is not at a level of economic development comparable to that of the nonmarket economy.* If the Secretary determines, pursuant to this section, after reviewing all proposed values on the record derived from market economy countries which are at a level of economic development comparable to the nonmarket economy, that no such proposed value is appropriate to value a specific factor of production, the Secretary may use a value on the record derived from a market economy country which is not at a level of economic development comparable to that of the nonmarket economy country as a surrogate to value that specific factor of production.

(4) *The use of a surrogate value not located in a country which is a significant producer of comparable merchandise.* If the Secretary determines, pursuant to this section, after reviewing all proposed surrogate values on the record derived from market economy countries which are significant producers of merchandise comparable to the subject merchandise, that no such proposed value is appropriate to value a specific factor of production, the Secretary may use a value on the record derived from a market economy country which is not a significant producer of merchandise comparable to the subject merchandise as a surrogate to value that specific factor of production.

■ 13. Add § 351.416 to read as follows:

§ 351.416 Determination of a particular market situation.

(a) *Particular market situation defined.* A particular market situation is a circumstance or set of circumstances that does the following as determined by the Secretary:

(1) Prevents or does not permit a proper comparison of sales prices in the home market or third country market with export prices and constructed export prices; or

(2) Contributes to the distortion of the cost of materials and fabrication or other processing of any kind, such that the cost of production of merchandise subject to an investigation, suspension agreement, or antidumping order does not accurately reflect the cost of production in the ordinary course of trade.

(b) *Submission requirements when alleging the existence of a particular market situation.* When an interested party submits a timely allegation as to the existence of a particular market situation in an antidumping duty proceeding, relevant information reasonably available to that interested party supporting the claim must accompany the allegation. If the particular market situation being alleged is similar to an allegation of a particular market situation made in a previous or ongoing segment of the same or another proceeding, the interested party must identify the facts and arguments in the submission which are distinguishable from those provided in the other segment or proceeding.

(c) *A determination that a particular market situation prevented or did not permit a proper comparison of prices existed during the period of investigation or review.* The Secretary may determine that a particular market situation, identified in paragraph (a)(1) of this section, existed during the period of investigation or review if a circumstance or set of circumstances prevented or did not permit a proper comparison between sales prices in the home market or third country market of the foreign like product and export prices or constructed export prices of subject merchandise for purposes of an antidumping analysis.

(1) *Examples of particular market situations in the home market that may prevent or do not permit a proper*

comparison with U.S. price. Examples of a circumstance or set of circumstances in the home market that may prevent or not permit a proper comparison of prices, and are therefore particular market situations, include, but are not limited to, the following:

(i) The imposition of an export tax on subject merchandise;

(ii) Limitations on exports of subject merchandise from the subject country;

(iii) The issuance and enforcement of anticompetitive regulations that confer a unique status on favored producers or that create barriers to new entrants to an industry; and

(iv) Direct government control over pricing of subject merchandise to such an extent that home market prices for subject merchandise cannot be considered competitively set.

(2) *Examples of particular market situations in a third country market that may prevent or not permit a proper comparison of prices.* In situations where third country prices may be needed to calculate normal value in a dumping calculation, the Secretary may determine that third country prices cannot be properly compared to export prices or constructed export prices for reasons similar to those listed in paragraph (c)(1) of this section.

(3) *The use of constructed value may be warranted if a proper comparison of prices is prevented or not permitted.* If the Secretary determines that a particular market situation prevented or did not permit a proper comparison of sales prices in the home market or third country market with export prices or constructed export prices during the period of investigation or review, the Secretary may conclude that it is necessary to determine normal value by constructing a value in accordance with section 773(e) of the Act and § 351.405.

(d) *A determination that a market situation existed during the period of investigation or review 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*—(1) *In general.* For purposes of this paragraph (d)(1), the Secretary will determine that a market situation, identified in paragraph (a)(2) of this section, existed during the period of investigation or review if the Secretary determines the following, based on information on the record:

(i) A circumstance or set of circumstances existed that may have impacted the costs of producing subject merchandise, or costs or prices of inputs into the production of subject merchandise;

(ii) The cost of materials and fabrication or other processing of any kind, including the prices of inputs used to produce subject merchandise, were not in accordance with market principles or distorted, and therefore did not accurately reflect the cost of production of subject merchandise in the ordinary course of trade; and

(iii) The circumstance or set of circumstances at issue contributed to the distortion of the cost of production of subject merchandise.

(2) *The Secretary will determine if it is more likely than not that a circumstance or set of circumstances contributed to distorted costs or prices.* In accordance with paragraph (d)(1)(iii), the Secretary will weigh the information on the record and determine whether it is more likely than not that the circumstance or set of circumstances contributed to the distortion in the cost of production of subject merchandise during the period of investigation or review, and therefore, that a market situation existed during that period.

(3) *Information the Secretary may consider in determining the existence of a market situation.* In determining whether a market situation existed in the subject country such that the cost of materials and fabrication or other processing did not accurately reflect the cost of production of subject merchandise in the ordinary course of trade during the period of investigation or review, the Secretary will consider all relevant information placed on the record by interested parties, including, but not limited to, the following:

(i) Comparisons of prices paid for significant inputs used to produce subject merchandise under the alleged market situation to prices paid for the same input under market-based circumstances, either in the home country or elsewhere;

(ii) Detailed reports and other documentation issued by foreign governments or independent international, analytical, or academic organizations indicating that lower prices for a significant input in the subject country would likely result from governmental or nongovernmental actions or inactions taken in the subject country or other countries;

(iii) Detailed reports and other documentation issued by foreign governments or independent international, analytical, or academic organizations indicating that prices for a significant input have deviated from a fair market value within the subject country, as a result, in part or in whole, of governmental or nongovernmental actions or inactions;

(iv) Agency determinations or results in which the Secretary determined record information did or did not support the existence of the alleged particular market situation with regard to the same or similar merchandise in the subject country in previous proceedings or segments of the same proceeding; and

(v) Information that property (including intellectual property), human rights, labor, or environmental protections in the subject country are weak, ineffective, or nonexistent, those protections exist and are effectively enforced in other countries, and that the ineffective enforcement or lack of protections may contribute to distortions in the cost of production of subject merchandise or prices or costs of a significant input into the production of subject merchandise in the subject country. For purposes of this paragraph (d)(3)(v), the Secretary will normally look to cost effects on same or similar merchandise produced in economically comparable countries in analyzing the impact of such protections on the cost of production.

(4) *No restrictions based on lack of precise quantifiable data, hypothetical prices or actions of governments and industries in other market economies.* In determining whether a market situation exists in the subject country such that the cost of materials and fabrication or other processing do not accurately reflect the cost of production in the ordinary course of trade, the following will not preclude the finding of a market situation:

(i) The lack of precision in the quantifiable data relating to the distortion of prices or costs in the subject country;

(ii) The speculated cost of production of the subject merchandise, or the speculated prices or costs of a significant input into the production of the subject merchandise, unsupported by objective data, that a party claims would hypothetically exist in the subject country absent the alleged particular market situation or its contributing circumstances;

(iii) The actions taken or not taken by governments, government-controlled entities, or other public entities in other market economy countries in comparison with the actions taken or not taken by the government, state enterprise, or other public entity of the subject country, with the exception of information associated with the allegations addressed in paragraph (d)(3)(v) of this section; and

(iv) The existence of the same or similar government or nongovernment actions in the subject country that

preceded the period of investigation or review.

(e) *Factors to consider in determining if a market situation is particular*—(1) *In general.* If the Secretary determines that a market situation exists under paragraph (c) or (d), the Secretary must also determine if the market situation is particular. A market situation is particular if it impacts prices or costs for only certain parties or products in the subject country. In reaching this determination, the following applies:

(i) A particular market situation may exist even if a large number of certain parties or products are impacted by the circumstance or set of circumstances. The Secretary's analysis does not concern the specific number of products or parties, but whether the market situation impacts only certain parties or products, or the general population of parties or products, in the subject country;

(ii) The same or similar market situations can exist in multiple countries or markets and still be considered particular for purposes of this paragraph (e)(1) if the Secretary determines that a market situation exists which distorts sales prices or cost of production for certain parties or products specifically in the subject country; and

(iii) There are varied circumstances in which a market situation in a subject country can be determined to be particular, and a market situation may apply only to certain producers, importers, exporters, purchasers, users, industries, or enterprises, individually or in any combination.

(2) *Information the Secretary may consider in determining if a market situation is particular.* In determining if a market situation in the subject country is particular in accordance with paragraph (e)(1) of this section, the Secretary will consider all relevant information placed on the record by interested parties, including, but not limited to, the following:

(i) The size and nature of the market situation;

(ii) The volume of merchandise potentially impacted by the price or cost distortions resulting from the market situation; and

(iii) The number and nature of the entities potentially affected by the price or cost distortions resulting from a market situation.

(f) *The Secretary may adjust its calculations to address distortions to which a particular market situation under paragraphs (d) and (e) of this section has contributed*—(1) *In general.* If the Secretary determines a particular market situation exists in the subject country which has contributed to a distortion in the cost of materials and fabrication or other processing, such that those costs do not accurately reflect the cost of production of subject merchandise in the ordinary course of trade, in accordance with sections 771(15) and 773(e) of the Act, the Secretary may address such distortions to the cost of production in its calculations.

(2) *Imprecise quantification of the distortions.* If, after consideration of the information on the record, the Secretary is unable to precisely quantify the distortions to the cost of production of subject merchandise in the ordinary course of trade to which the particular market situation has contributed, the Secretary may use any reasonable methodology based on record information to adjust its calculations to address those distortions.

(3) *The Secretary may determine not to adjust its calculations.* If the Secretary determines that a particular market situation exists in the subject country which has contributed to the distortions to the cost of production, but that an adjustment to its calculations of the cost of production of subject merchandise is not appropriate based on record information, the Secretary may determine not to adjust its calculations. In determining whether an adjustment is appropriate, the Secretary may consider the following:

(i) Whether the cost distortion is already sufficiently addressed in its calculations in accordance with another statutory provision, such as the transaction disregarded and major input rules of sections 773(f)(2) and (3) of the Act;

(ii) Whether a reasonable method for quantifying an adjustment to the calculations is absent from the record; and

(iii) Whether information on the record suggests that the application of an adjustment to the Secretary's calculations would otherwise be unreasonable.

(g) *Examples of particular market situations which contribute to distortions in the cost of materials and fabrication or other processing of any kind, such that those costs do not accurately reflect the cost of production in the ordinary course of trade.* Examples of particular market situations which may contribute to the distortion of the cost of production of subject merchandise in the subject country, alone or in conjunction with others, include, but are not limited to, the following:

(1) A significant input into the production of subject merchandise is produced in such amounts that there is considerably more supply than demand in international markets for the input and the Secretary concludes, based on record information, that regardless of the impact of such overcapacity of the significant input on other countries, such overcapacity contributed to distortions of the price or cost of that input in the subject country during the period of investigation or review;

(2) A government, government-controlled entity, or other public entity in the subject country owns or controls the predominant producer or supplier of a significant input used in the production of subject merchandise and the Secretary concludes, based on record information, that such ownership or control of the producer or supplier contributed to price or cost distortions of that input in the subject country during the period of investigation or review;

(3) A government, government-controlled entity, or other public entity in the subject country intervenes in the market for a significant input into the production of subject merchandise and the Secretary concludes, based on record information, such that the intervention contributed to price or cost distortions of that input in the subject country during the period of investigation or review;

(4) A government in the subject country limits exports of a significant input into the production of subject merchandise and the Secretary concludes, based on record information, that such export limitations contributed to price or cost distortions of that input in the subject country during the period of investigation or review;

(5) A government in the subject country imposes export taxes on a significant input into the production of subject merchandise and the Secretary concludes, based on record information, that such taxes contributed to price or cost distortions of that input in the subject country during the period of investigation or review;

(6) A government in the subject country exempts an importer, producer, or exporter of subject merchandise from paying duties or taxes associated with trade remedies established by the government relating to a significant input into the production of subject merchandise during the period of investigation or review;

(7) A government in the subject country rebates duties or taxes paid by an importer, producer or exporter of subject merchandise associated with trade remedies established by the government related to a significant input into the production of subject

merchandise during the period of investigation or review;

(8) A government, government-controlled entity, or other public entity in the subject country provides financial assistance or other support to the producer or exporter of subject merchandise, or to a producer or supplier of a significant input into the production of subject merchandise and the Secretary concludes, based on record information, that such assistance or support contributed to cost distortions of subject merchandise or distortions in the price or cost of a significant input into the production of subject merchandise in the subject country during the period of investigation or review;

(9) A government, government-controlled entity, or other public entity in the subject country mandates, through law or in practice, the use of a certain percentage of domestic-manufactured inputs, the sharing or use of certain intellectual property or production processes, or the formation of certain business relationships with other entities to produce subject merchandise or a significant input into the production of subject merchandise and the Secretary concludes, based on record information, that those requirements contributed to cost distortions of subject merchandise or distortions in the price or cost of a significant input into the production of subject merchandise in the subject country during the period of investigation or review;

(10) A government, government-controlled entity, or other public entity in the subject country does not enforce its property (including intellectual property), human rights, labor, or environmental protection laws and policies, or those laws and policies are otherwise shown to be ineffective with respect to either a producer or exporter of subject merchandise, or to a producer or supplier of a significant input into the production of subject merchandise in the subject country and the Secretary concludes, based on record information, that the lack of enforcement or effectiveness of such laws and policies contributed to cost distortions of subject merchandise or distortions in the price or cost of a significant input into the production of subject merchandise during the period of investigation or review;

(11) A government, government-controlled entity, or other public entity in the subject country does not implement property (including intellectual property), human rights, labor, or environmental protection laws and policies and the Secretary concludes, based on record information, that the absence of such laws and policies contributed to cost distortions of subject merchandise, or distortions in the price or cost of a significant input into the production of subject merchandise in the subject country during the period of investigation or review; and

(12) Nongovernmental entities take actions which the Secretary concludes, based on record information, contributed to cost distortions of subject merchandise or distortions in the price or cost of a significant input into the production of subject merchandise in the subject country during the period of investigation or review. Actions that result in distortive prices and costs by nongovernmental entities covered by this example include, but are not limited to, the formation of business relationships between one or more producers of subject merchandise and suppliers of significant inputs to the production of subject merchandise, including mutually-beneficial strategic alliances or noncompetitive arrangements, as well as sales by third-country exporters of significant inputs into the subject country for prices for less than fair value.

(h) *A particular market situation which contributes to distortions in the cost of materials and fabrication or other processing of any kind, such that the costs do not accurately reflect the cost of production in the ordinary course of trade, may also contribute to a particular market situation that prevents or does not permit a proper comparison of prices.* If the Secretary determines that a particular market situation existed during the period of investigation or review such that the cost of materials and fabrication or other processing of any kind did not accurately reflect the cost of production of subject merchandise in the ordinary course of trade, the Secretary may consider, based on record information, whether that particular market situation also contributed to the circumstance or set of circumstances that prevented, or did not permit, a proper comparison of home market or third country sales prices with export prices or constructed export prices, in accordance with section 771(15)(C) of the Act.

■ 14. In § 351.503, revise paragraph (c) to read as follows:

§ 351.503 Benefit.

* * * * *

(c) *Distinction from effect of subsidy*—(1) *In general.* In determining whether a benefit is conferred, the Secretary is not required to consider the effect or impact of the government action on the firm's performance, including its costs, prices, output, or whether the firm's behavior is otherwise altered.

(2) *Subsidy provided to support compliance with a government-imposed mandate.* When a government provides assistance to a firm to comply with a government regulation, requirement or obligation, the Secretary, in measuring the benefit from the subsidy, will not consider whether the firm incurred a cost in complying with the government-imposed regulation, requirement, or obligation.

* * * * *

■ 15. In § 351.505, revise paragraph (d) and add paragraph (e) to read as follows:

§ 351.505 Loans.

* * * * *

(d) *Treatment of outstanding loans as grant after three years of no payments of interest or principal.* With the exception of debt forgiveness tied to a particular loan and contingent liability interest-free loans, addressed in § 351.508 and paragraph (e) of this section, the Secretary will normally treat a loan as a grant if no payments on the loan have been made in three years unless the loan recipient can demonstrate that nonpayment is consistent with the terms of a comparable commercial loan it could obtain on the market, or the payments on the loan are consistent with the terms of the loan contract.

(e) *Contingent liability interest-free loans*—(1) *Treatment as loans.* In the case of an interest-free loan, for which the repayment obligation is contingent upon the company taking some future action or achieving some goal in fulfillment of the loan's requirements, the Secretary normally will treat any balance on the loan outstanding during a year as an interest-free, short-term loan in accordance with paragraphs (a), (b), and (c)(1) of this section. However, if the event upon which repayment of the loan depends will occur at a point in time more than one year after the receipt of the contingent liability loan, the Secretary will use a long-term interest rate as the benchmark in accordance with paragraphs (a), (b), and (c)(2) of this section. In no event may the present value (in the year of receipt of the contingent liability loan) of the amounts calculated under this paragraph exceed the principal of the loan.

(2) *Treatment as grants.* If, at any point in time, the Secretary determines that the event upon which repayment depends is not a viable contingency, the Secretary will treat the outstanding balance of the loan as a grant received

in the year in which this condition manifests itself.

■ 16. In § 351.507, revise paragraph (c) and add paragraph (d) to read as follows:

§ 351.507 Equity.

* * * * *

(c) *Outside investor standard.* Any analysis made under paragraph (a) of this section will be based upon the standard of a new outside private investor. The Secretary normally will consider whether an outside private investor, under its usual investment practice, would make an equity investment in the firm, and not whether a private investor who has already invested in the firm would continue to invest in the firm.

(d) *Allocation of benefit to a particular time period.* The benefit conferred by an equity infusion shall be allocated over a period of 12 years or the same time period as a non-recurring subsidy under § 351.524(d), whichever is longer.

■ 17. In § 351.508, revise paragraph (c)(1) to read as follows:

§ 351.508 Debt forgiveness.

* * * * *

(c) * * *

(1) *In general.* The Secretary will treat the benefit determined under paragraph (a) of this section as a non-recurring subsidy and will allocate the benefit to a particular year in accordance with § 351.524(d), or over a period of 12 years, whichever is longer.

* * * * *

■ 18. In § 351.509, add paragraph (d) to read as follows:

§ 351.509 Direct taxes.

* * * * *

(d) *Benefit not tied to particular markets or products.* If a program provides for a full or partial exemption, reduction, credit, or remission of an income tax, the Secretary normally will consider any benefit to be not tied with respect to a particular market under § 351.525(b)(4) or to a particular product under § 351.525(b)(5).

■ 19. In § 351.511, add paragraph (a)(2)(v) to read as follows:

§ 351.511 Provision of goods or services.

(a) * * *

(2) * * *

(v) *Exclusion of certain prices.* In measuring the adequacy of remuneration under this section, the Secretary may exclude certain prices from its analysis if interested parties have demonstrated, with sufficient information, that those prices are derived from countries with weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, or environmental protections, and that the lack of such protections would likely impact such prices.

* * * * *

■ 20. In § 351.520, revise paragraph (a)(1) to read as follows:

§ 351.520 Export insurance.

(a) * * *

(1) In *general.* In the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program normally over a five-year period.

* * * * *

■ 21. In § 351.525, revise paragraphs (b)(2) and (3) to read as follows:

§ 351.525 Calculation of ad valorem subsidy rate and attribution of subsidy to a product.

* * * * *

(b) * * *

(2) *Export subsidies.* The Secretary will normally attribute an export subsidy only to products exported by a firm.

(3) *Domestic subsidies.* The Secretary will normally attribute a domestic subsidy to all products sold by a firm, including products that are exported.

* * * * *

§ 351.527 [Removed and Reserved]

■ 22. Remove and reserve § 351.527.

■ 23. Add § 351.529 to read as follows:

§ 351.529 Certain fees, fines, and penalties.

(a) *Financial contribution.* When determining if a fee, fine, or penalty that is otherwise due, has been forgone or not collected, within the meaning of section 771(5)(D)(ii) of the Act, the Secretary may conclude that a financial contribution exists if information on the record demonstrates that payment was otherwise required and was not made, in full or in part. In making such a determination, the Secretary will not be required to consider whether the government took efforts to seek payment or grant deferral, or otherwise acknowledged nonpayment, of the fee, fine, or penalty.

(b) *Benefit.* If the Secretary determines that the government has exempted or remitted in part or in full, a fee, fine, or penalty under paragraph (a) of this section, a benefit exists to the extent that the fee, fine, or penalty paid by a party is less than if the government had not exempted or remitted that fee, fine, or penalty. Further, if the government is determined to have deferred the payment of the fee, fine, or penalty, in part or in full, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of payment of fees, fines, or penalties will be treated as a government provided loan in the amount of the payments deferred, according to the methodology described in § 351.505.

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